

NORTH CAROLINA REGISTER

VOLUME 33 • ISSUE 24 • Pages 2346 – 2429

June 17, 2019

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PUBLISHED BY

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Raleigh, North Carolina 27601

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NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
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34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



State of North Carolina

ROY COOPER
GOVERNOR

May 23, 2019

EXECUTIVE ORDER NO. 95

PROVIDING PAID PARENTAL LEAVE TO ELIGIBLE STATE EMPLOYEES

WHEREAS, the undersigned is committed to making North Carolina state government a competitive employer, capable of recruiting, retaining, and supporting top talent to serve North Carolinians; and

WHEREAS, most of North Carolina's top employers offer paid parental leave benefits to their employees; and

WHEREAS, the North Carolina Department of Administration's 2018 Status of Women Report found that the share of women in the state's labor pool decreased between 2002 and 2016, a period when North Carolina's overall population increased significantly; and

WHEREAS, while there are now more opportunities for women in the workforce than ever before, working women cite family caregiving responsibilities as a barrier to their ability to participate full-time in the workforce; and

WHEREAS, paid parental leave can promote families' physical and mental health, increase worker retention, and improve worker productivity and morale; and

WHEREAS, paid parental leave fosters the recuperation, health, and wellbeing of employees who have recently given birth and supports longer infant breastfeeding; and

WHEREAS, providing paid parental leave can reduce the likelihood that working parents apply for taxpayer-funded public benefits; and

WHEREAS, babies born to parents with paid parental leave are less likely to be born prematurely and are more likely to be born at a healthy birth weight; and

WHEREAS, children whose parents have access to paid parental leave and other family-friendly employment benefits are more likely to regularly attend well care visits, have better school attendance, and exhibit fewer behavioral or mental health problems; and

WHEREAS, the North Carolina Early Childhood Action Plan, prepared pursuant to Exec. Order No. 49, 33 N.C. Reg. 630-31 (Oct. 1, 2018), highlights paid parental leave and other family-friendly employment benefits as strategies to ensure children across the state grow up healthy, confident, independent, and resilient in safe, stable, and nurturing families and communities; and

WHEREAS, the undersigned is committed to supporting working families in North Carolina by making it easier for them to fulfill their caregiving responsibilities without risking financial insecurity and encourages private sector employers to follow suit.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Purpose

It shall be the policy of the Office of the Governor and State Agencies, as defined herein, to provide eight (8) weeks of fully paid parental leave to an Eligible State Employee who has given birth to a Child, and four (4) weeks of fully paid parental leave to an Eligible State Employee in other circumstances involving the birth of a Child to that employee, or the adoption, foster placement, or other legal placement of a Child with an Eligible State Employee.

Section 2. Definitions

- a. "State Agency": Any North Carolina department, agency, board, commission, or committee for which the Governor has oversight responsibility.
- b. "Eligible State Employee": A full-time, part-time (half-time or more)–permanent, probationary, or time-limited employee who has been continuously employed by the State of North Carolina for the immediate twelve (12) preceding months and is eligible for Family and Medical Leave ("FML") by being in pay status for at least 1,040 hours in the previous twelve-month period as set forth in 25 N.C. Admin. Code 01E.1402(a).
- c. "Parent": A parent by childbirth, adoption, foster care, or other legal placement.
- d. "Child": A newborn biological child or a newly placed adopted, foster, or otherwise legally placed child under the age of eighteen (18), whose Parent is an Eligible State Employee.
- e. "Paid Parental Leave": Eight (8) weeks (320 hours) of 100% paid leave to be provided to a full-time Eligible State Employee upon the Eligible State Employee giving birth or four (4) weeks (160 hours) of 100% paid leave to be provided to a full-time Eligible State Employee after any other Qualifying Event. Leave for a part-time (half-time or more) Eligible State Employee shall be on a prorated basis corresponding to the percentage of hours they are normally scheduled to work. Unless otherwise specified in this Executive Order or in OSHR guidelines, leave for part-time State Agency employees shall be the same in all respects as Paid Parental Leave for Eligible State Employees.
- f. "Public Safety Concern": A significant impairment to the State Agency's ability to conduct its operations in a manner that protects the health and safety of North Carolinians. The extension of Paid Parental Leave to an Eligible State Employee may constitute a Public Safety Concern if: (1) the provision of Paid Parental Leave results in State Agency staffing levels below what is required by federal or state law to maintain operational safety or that may impact the health and/or safety of staff, patients, residents, offenders, or other individuals the State Agency is required by law to protect, and (2) the State Agency has been unable to secure supplemental staffing after requesting or diligently exploring alternative staffing options.
- g. "Qualifying Event": The birth of a Child to an Eligible State Employee, or the adoption, foster care placement, or other legal placement of a Child with an Eligible State Employee.

Section 3. Paid Parental Leave

- a. State Agencies shall provide Paid Parental Leave to Eligible State Employees upon a Qualifying Event.
- b. Paid Parental Leave shall be used within twelve (12) months of the Qualifying Event. Notwithstanding Section 3.g, under no circumstances may Paid Parental Leave be denied, delayed, or provided intermittently to an Eligible State Employee who has given birth, unless that employee requests intermittent Paid Parental Leave.

- c. Each week of Paid Parental Leave shall be compensated at 100% of the Eligible State Employee's regular, straight-time weekly pay.
- d. Subject to Section 3.e, both Parents may receive Paid Parental Leave if they are Eligible State Employees. Both Parents may take their leave simultaneously or at different times.
- e. An Eligible State Employee who has given birth may receive eight (8) weeks of Paid Parental Leave (prorated for part-time employees) but will not receive an additional four (4) weeks of Paid Parental Leave for that birth.
- f. Paid Parental Leave shall run concurrently with FML as applicable.
- g. Subject to Section 3.b, State Agencies must provide Paid Parental Leave as soon as practical following the Qualifying Event. If an employing State Agency determines that providing Paid Parental Leave will cause a Public Safety Concern, that agency may delay providing Paid Parental Leave or provide Paid Parental Leave in intermittent periods.
- h. Paid Parental Leave shall not be counted against or deducted from the Eligible State Employee's accrued leave.
- i. Paid Parental Leave may be used only once for a Qualifying Event within a rolling twelve-month period.
- j. Paid Parental Leave shall be made available to Eligible State Employees who have a Qualifying Event on or after September 1, 2019.

Section 4. OSHR Obligations

- a. OSHR shall work with State Agencies to ensure State Agency Employees and all relevant State Agency management and staff receive information about and understand the obligations and rights established by this Executive Order. OSHR shall develop and disseminate guidelines on the administration of Paid Parental Leave that detail how it shall interact with FML or other leave as applicable.
- b. Consistent with existing state law, OSHR shall take any additional steps necessary to provide guidelines in accordance with this Executive Order.
- c. OSHR shall report to the Office of the Governor on the implementation and usage of Paid Parental Leave by September 1, 2020.

Section 5. State Agency Obligations

- a. State Agencies shall work with OSHR to ensure State Agency Employees, management, and staff receive information about and understand the obligations and rights established by this Executive Order.
- b. State Agencies shall collect information regarding the usage of Paid Parental Leave by Eligible State Employees for the previous fiscal year and submit that information to OSHR by July 1, 2020, and every July 1 thereafter.

Section 6. Employee Obligations

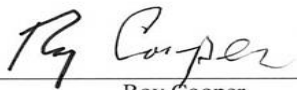
- a. Eligible State Employees shall be required to submit documentation that they will use Paid Parental Leave to give birth to a Child or will use Paid Parental Leave to care for or bond with a Child. A State Agency may take appropriate action if there is evidence that the employee fraudulently requested, used, or otherwise abused Paid Parental Leave.

- b. Whenever possible, Eligible State Employees shall be required to notify their employing State Agencies at least ten (10) weeks in advance of their intention to use Paid Parental Leave so that those agencies may secure backfill coverage.

Section 7. Miscellaneous

- a. This Executive Order does not apply to counties, municipalities, political subdivisions, local government agencies, or private entities.
- b. This Executive Order does not create a private cause of action.
- c. This Executive Order is consistent with and does not abrogate federal or state law.
- d. State entities not subject to the undersigned's oversight are encouraged but not required to comply with this Executive Order.
- e. Unless otherwise provided, this Executive Order supersedes and rescinds any previous Executive Order to the extent that they conflict.
- f. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23rd day of May in the year of our Lord two thousand and nineteen.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State



Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rule cited as 02 NCAC 09E .0116 and amend the rule cited as 02 NCAC 20B .0104.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncagr.gov/administrativerules/proposedrules/index.htm>

Proposed Effective Date: October 1, 2019

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 7/2/19 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action:

02 NCAC 09E .0116 is being adopted because there are currently gaps in the administrative code. When Food and Drug Protection Division inspectors visit retail pet and commercial feed stores and observe pest activity, unsanitary facilities, or unclean equipment, they have no specific rules to cite to that address how businesses can remedy the situation. The current good manufacturing practice found under Subpart B of 21 CFR Part 507 provides guidance and a framework for those that engage the selling and manufacturing of commercial feed on how to provide wholesome pet and commercial feed. Having the rule in place will provide transparency, and uniformity, to the expectations of the department under the NC Commercial Feed Law.

02 NCAC 09E .0104 is being amended to take out the operating hours. The hours are published on the website and through various means throughout the year - in print and on-line. This change will allow management to open the fair earlier on the opening day. The admission prices are also being removed as the State Fair is exempt from setting admission prices through rulemaking.

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; email tina.hlabse@ncagr.gov

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after

the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 09 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09E - FEED

02 NCAC 09E .0116 CURRENT GOOD MANUFACTURING PRACTICE OF THE NORTH CAROLINA COMMERCIAL ANIMAL FEED AND PET FOOD PROGRAM

Any person that engages in activities regulated by the North Carolina Commercial Feed Law of 1973 shall comply with the standards set forth under Subpart B of 21 C.F.R. Part 507, titled "Current Good Manufacturing Practice," including subsequent amendments, as adopted and incorporated under 02 NCAC 09B .0116(o)(130).

Authority G.S. 106-284.41.

CHAPTER 20 - STATE FAIR

SUBCHAPTER 20B - REGULATIONS OF THE STATE FAIR

SECTION .0100 - GENERAL PROVISIONS

02 NCAC 20B .0104 ADMISSION RULES

(a) All persons entering the North Carolina State Fair grounds ~~Fairgrounds~~ must pay the established admission fee except persons holding worker's permits, or persons admitted via special promotion. One-time-only, or fair-length admissions may be issued to those persons who are employed by the Fair or are asked to appear on the grounds by the Fair management for a specific purpose relative to the operation of the fair.

~~(b) The gates of the North Carolina State Fair shall be open to visitors on the following schedule during the fair:~~

- | | | |
|-----|----------------------------|------------------------------------|
| (1) | Opening Thursday | 3:00 p.m. |
| | | until 11:00 p.m. |
| (2) | Both Fridays and Saturdays | 8:00 a.m. |
| | | until midnight |
| | | and the second Thursday |
| (3) | All other days | 8:00 a.m. |
| | | until 11:00 p.m. |

Exhibit buildings shall be open from 9:00 a.m. to 9:45 p.m. daily, except for opening Thursday when the buildings will open at 4:00 p.m.

~~(c)~~(b) The State Fair Manager may operate a pass-out system at one or more of the outside gates. Persons exiting through these gates may, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp shall not be honored.

~~(d) Outside gate admission prices are as follows:~~

- | | | |
|-----|---------------------------------------|--------|
| (1) | adult/child, 13 years of age and over | \$9.00 |
| (2) | child, 6 through 12 years of age | \$4.00 |
| (3) | military, with valid ID | \$5.00 |
| (4) | senior citizen, 65 and over | Free |
| (5) | child, under 6 years of age | Free |

~~(e) Outside gate admission prices for advance ticket sales are as follows:~~

- | | | |
|-----|--|--------|
| (1) | adult/child, 13 years of age and over | \$7.00 |
| (2) | child, 6 through 12 years of age | \$3.00 |
| (3) | senior citizen, 65 and over | Free |
| (4) | child, under 6 years of age | Free |
| (5) | adult group sales purchasing a minimum of 40 tickets | \$5.00 |

Authority G.S. 106-503.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Health and Human Services intends to readopt with substantive changes the rule cited as 10A NCAC 01E .0101 and repeal through readoption the rules cited as 10A NCAC 01E .0102- .0108, .0201- .0208, and .0301-.0305.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdhhs.gov/about/administrative-offices/office-secretary>

Proposed Effective Date: January 1, 2020

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A public hearing

can be requested by contacting Joel Johnson at the Office of General Counsel. Email joel.johnson@dhhs.nc.gov; Fax (919) 733-3854; Mailing Address: 2001 Mail Service Center, Raleigh, NC 27699-2001

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 01E, Grievance Procedures, 21 rules were determined to be "Necessary with Substantive Public Interest," requiring readoption by January 31, 2020. One of these 21 rules is being proposed for readoption with substantive changes, while 20 of these are being proposed for readoption as a repeal in order to streamline the information available to the public regarding grievance forms, and accessibility of the forms used by the Department for grievances or complaints. In summary, 10A NCAC 01E .0101 is being proposed for readoption with substantive changes and the following rules are being proposed for readoption as a repeal: 10A NCAC 01E .0102-.0108, .0201-.0208, and .0301-.0305.

Comments may be submitted to: Joel Johnson, 2001 Mail Service Center, Raleigh, NC 27699-2001; email joel.johnson@dhhs.nc.gov

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01E – GRIEVANCE NONDISCRIMINATION PROCEDURES

SECTION .0100 – ADA GRIEVANCE NONDISCRIMINATION PROCEDURES

**10A NCAC 01E .0101 ~~APPLICABILITY AND SCOPE~~
~~NONDISCRIMINATION PROCEDURES~~**

~~This Subchapter provides for the prompt and equitable resolution of complaints against any division within the Department of Human Resources alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act, 28 CFR Part 35. The Department of Health and Human Services provides for the prompt and equitable resolution of complaints against any Division within the Department alleging any act prohibited by Federal laws and regulations implementing Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and other applicable nondiscrimination regulations as required by Federal agencies for the Department's receipt of Federal financial assistance. The Department's forms for filing complaints or grievances are located at <https://www.ncdhhs.gov/about/departments-initiatives/ada-grievance-procedure>.~~

Authority 28 C.F.R. 35.107; 45 C.F.R. 84.7; 45 C.F.R. Part 80.7.

10A NCAC 01E .0102	COMPLAINTS
10A NCAC 01E .0103	INVESTIGATION
10A NCAC 01E .0104	WRITTEN DETERMINATION
10A NCAC 01E .0105	RECONSIDERATION
10A NCAC 01E .0106	RECORDS
10A NCAC 01E .0107	OTHER REMEDIES
10A NCAC 01E .0108	CONSTRUCTION

Authority 28 C.F.R. 35.107.

**SECTION .0200 - SECTION 504 GRIEVANCE
PROCEDURES**

10A NCAC 01E .0201	APPLICABILITY AND SCOPE
10A NCAC 01E .0202	COMPLAINTS
10A NCAC 01E .0203	INVESTIGATION
10A NCAC 01E .0204	WRITTEN DETERMINATION
10A NCAC 01E .0205	RECONSIDERATION
10A NCAC 01E .0206	RECORDS
10A NCAC 01E .0207	OTHER REMEDIES
10A NCAC 01E .0208	CONSTRUCTION

Authority G.S. 143B-10(j)(2); 45 C.F.R. 84.7.

**SECTION .0300 - TITLE VI OF THE CIVIL RIGHTS ACT
OF 1964 GRIEVANCE PROCEDURES**

10A NCAC 01E .0301	APPLICABILITY AND SCOPE
10A NCAC 01E .0302	COMPLAINTS
10A NCAC 01E .0303	INVESTIGATION
10A NCAC 01E .0304	RESOLUTION OF MATTERS
10A NCAC 01E .0305	RECONSIDERATION

Authority G.S. 143B-10(j)(2); 45 C.F.R. Part 80.7.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to amend the rules cited as 10A NCAC 13C .1401-.1403, repeal the rules cited as 10A NCAC 13C .1408, .1409, readopt with substantive changes the rule cited as 10A NCAC 13C .1404, and repeal through readoption the rules cited as 10A NCAC 13C .1405-.1407 and .1410.

Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: January 1, 2020

Public Hearing:

Date: July 25, 2019

Time: 10:00 a.m.

Location: Dorothea Dix Park, Williams Building, Room 123B,
1800 Umstead Drive, Raleigh NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13C, Licensing of Ambulatory Surgical Facilities, 5 of these 10 proposed rules were part of the nine rules that were determined as "Necessary With Substantive Public Interest," requiring readoption. In addition, 3 of these 10 rules are proposed for amendment and two rules are proposed for repeal. Of these 10 proposed rules, three rules, 10A NCAC 13C .1401-.1403, are being amended to adopt the guidelines of the Facility Guidelines Institute (FGI) for ambulatory surgical center facilities so that licensed ambulatory surgical centers in N.C. will be designed and constructed in compliance with a national standard of practice. Following the national standards will benefit the quality of physical plant safety provided to citizens of N.C. in these facilities. Proposed Rule 10A NCAC 13C .1404 is being readopted with substantive changes for granting equivalencies to requirement alternate design and functional variations and to clarify regulatory conflict. The four revised proposed rules contain all the necessary construction requirements for these licensed ambulatory surgical care facilities. Therefore, Rules 10A NCAC 13C .1405 - .1407 and .1410 are proposed for readoption as a repeal and Rules 10A NCAC 13C .1408 and .1409 are proposed for repeal as they are no longer needed.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules

Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ **State funds affected**
- ☐ **Local funds affected**
- ☒ **Substantial economic impact (\geq \$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

SUBCHAPTER 13C – LICENSING OF AMBULATORY SURGICAL FACILITIES

SECTION .1400 - PHYSICAL PLANT CONSTRUCTION

10A NCAC 13C .1401 OPERATING SUITE

DEFINITIONS

The size and design of the suite shall be in accordance with individual programs, but the following basic elements designed to ensure no flow of through traffic must be incorporated in all facilities:

- (1) ~~Operating Room(s). The number shall depend on the projected case load and types of procedures to be performed. Rooms used for surgery shall have adequate space to accommodate necessary equipment and personnel.~~
- (2) ~~Service Areas. The following supporting services shall be provided:~~
 - (a) ~~scrub up facilities with foot or knee controls;~~
 - (b) ~~personnel locker and dressing areas so located that personnel enter from uncontrolled areas and exit directly into a surgical suite. Locker space shall be provided for each employee; and a toilet, shower, and dressing area shall be provided in each personnel dressing room;~~
 - (c) ~~separate rooms for clean and for soiled supplies and equipment;~~
 - (d) ~~anesthesia workroom;~~
 - (e) ~~one clerical control station; and~~
 - (f) ~~a janitor's closet conveniently located to serve only the licensed facility.~~

In addition to the definitions set forth in G.S. 131E-146, the following definitions shall apply in Section .1400 of this Subchapter:

- (1) "Addition" means an extension or increase in floor area or height of a building.
- (2) "Alteration" means any construction or renovation to an existing building other than construction of an addition.
- (3) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .0202 of this Subchapter.
- (4) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- (5) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (6) "Facility" means an ambulatory surgical facility as defined in G.S. 131E-146.
- (7) "FGI Guidelines" means the Guidelines for Design and Construction of Outpatient Facilities that is incorporated by reference in Rule .1402 of this Section.

Authority G.S. 131E-145; 131E-146; 131E-149.

10A NCAC 13C .1402 RECOVERY AREA LIST OF REFERENCED GUIDELINES, CODES, STANDARDS, AND REGULATION

~~Recovery area with handwashing facilities, secured medication storage space, clerical work space, storage for clerical supplies, linens, and patient care supplies and equipment shall be provided. (a) The FGI Guidelines are incorporated herein by reference, including all subsequent amendments and editions; however, the following chapters of the FGI Guidelines shall not be incorporated herein by reference:~~

- (1) ~~Chapter 2.3;~~
- (2) ~~Chapter 2.4;~~
- (3) ~~Chapter 2.5;~~
- (4) ~~Chapter 2.6;~~
- (5) ~~Chapter 2.8;~~
- (6) ~~Chapter 2.10;~~
- (7) ~~Chapter 2.11;~~
- (8) ~~Chapter 2.12;~~
- (9) ~~Chapter 2.13; and~~
- (10) ~~Chapter 2.14.~~

Copies of the FGI Guidelines may be purchased from the Facility Guidelines Institute online at <https://www.fgiguideines.org/guidelines-main/purchase/> at a cost of two hundred dollars (\$200.00) or accessed electronically free of charge at <https://www.fgiguideines.org/guidelines-main/>. (b) For the purposes of the rules of this Section, the following codes, standards, and regulation are incorporated herein by reference including subsequent amendments and editions. Copies of these codes, standards, and regulation may be obtained or accessed from the online addresses listed:

- (1) the North Carolina State Building Codes with copies that may be purchased from the International Code Council online at <https://shop.iccsafe.org/> at a cost of six hundred sixty-six dollars (\$666.00) or accessed electronically free of charge at <https://shop.iccsafe.org/state-and-local-codes/north-carolina.html>;
- (2) the following National Fire Protection Association standards, codes, and guidelines with copies of these standards, codes, and guidelines that may be accessed electronically free of charge at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards> or may be purchased online at <https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx> for the costs listed:
 - (A) NFPA 22, Standard for Water Tanks for Private Fire Protection for a cost of fifty-four dollars (\$54.00);
 - (B) NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres for a cost of fifty-three dollars (\$53.00);
 - (C) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas for a cost of fifty-four dollars (\$54.00);
 - (D) NFPA 99, Health Care Facilities Code for a cost of seventy-seven dollars (\$77.00);
 - (E) NFPA 101, Life Safety Code for a cost of one hundred and five dollars and fifty cents (\$105.50);
 - (F) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials for a cost of forty-two dollars (\$42.00);
 - (G) NFPA 407, Standard for Aircraft Fuel Servicing for a cost of forty-nine dollars (\$49.00);
 - (H) NFPA 705, Recommended Practice for a Field Flame Test for Textiles and Films for a cost of forty-two dollars (\$42.00);
 - (I) NFPA 780, Standard for the Installation of Lightning Protection Systems for a cost of sixty-three dollars and fifty cents (\$63.50);
 - (J) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials for a cost of forty-nine dollars (\$49.00); and
 - (K) Fire Protection Guide to Hazardous Materials for a cost of one hundred and thirty-five dollars and twenty-five cents (\$135.25).

- (3) 42 CFR Part 416.54 Condition of participation: Emergency preparedness with copies of this regulation that may be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml> or purchased online at <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7> for a cost of seventy-seven dollars (\$77.00).

Authority G.S. 131E-149.

10A NCAC 13C .1403 ~~SUPPORTING ELEMENTS~~ GENERAL AND EMERGENCY PREPAREDNESS

In addition to those areas covered in Rules .1401 and .1402 of this Section, the facility shall provide space for the following:

- (1) the receiving and registering of patients in privacy for obtaining confidential information;
- (2) waiting space with public toilets, public telephone, drinking fountain, and wheelchair storage;
- (3) preoperative preparation and post-operative space for both males and females with dressing rooms and toilet facilities; and
- (4) secure storage for patients' personal effects.

(a) A new facility or any addition or alterations to an existing facility whose construction documents were approved by the Construction Section on or after July 1, 2020 shall meet the requirements set forth in:

- (1) the rules of this Section; and
- (2) the FGI Guidelines.

(b) An existing facility whose construction documents were approved by the Construction Section prior to July 1, 2020 shall meet those standards established in the rules of this Section that were in effect at the time the construction documents were approved by the Construction Section. Previous versions of the rules of this Section can be accessed online at <https://www.ncdhhs.gov/dhsr/const/index.html>.

(c) The facility shall develop and maintain an emergency preparedness program as required by 42 CFR Part 416.54 Condition of Participation: Emergency Preparedness. The emergency preparedness program shall be developed with input from the local fire department and local emergency management agency. Documentation required to be maintained by 42 CFR Part 416.54 shall be maintained at the facility for at least three years and shall be made available to the Division during an inspection upon request.

(d) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (a) of this Rule.

Authority G.S. 131E-149; 42 CFR Part 416.54.

10A NCAC 13C .1404 ~~DETAILS AND FINISHES~~ EQUIVALENCY AND CONFLICTS WITH REQUIREMENTS

All details and finishes must meet the following requirements:

- (1) Details
 - (a) The type of construction shall meet the requirement of the current edition of

- ~~may be not less than 7' 8" (2.34 m.).~~
Suspended tracks, rails, pipes, etc., located in the path of normal traffic, shall be not less than 7' 6" (2.28 m.) above the floor.
- (b) Exit corridors, in addition to meeting the appropriate requirements of the North Carolina State Building Code, shall:
 - (i) ~~be no less than 7'0" clear width between doors from the recovery area or operating rooms and required exit doors; or~~
 - (ii) ~~if in a one story building or on the ground floor of a multi story building and is less than 7'0" clear width be so arranged as to allow a stretcher to exit from the recovery area or operating room directly into the corridor without turning and move to the required exit without having to make a turn.~~
 - (c) ~~Doors between preoperative preparation, operating rooms and recovery areas and recovery rooms and corridors shall be no less than 44" wide. All recovery areas shall have at least one door opening to an exit passage way meeting the requirements of (b)(i) and (b)(ii) of this Rule.~~
 - (d) ~~Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.~~
 - (e) ~~No doors shall swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width except doors to spaces such as small closets which are not subject to occupancy.~~
 - (f) ~~Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts.~~
 - (g) ~~Single use towel dispensers or air driers shall be provided at all handwashing fixtures except scrub sinks.~~
 - (h) ~~All other rooms shall have not less than 8'0" (2.44 m.) high ceilings except that corridors, storage rooms, toilet rooms, and other minor rooms~~
- (2) **Finishes**
- (a) ~~Floors shall be easily cleanable and have wear resistance appropriate for the locations involved. Joints in tile and similar material in such areas shall be resistant to food acids.~~
 - (b) ~~Wall bases in operating rooms, soiled workrooms, and other areas subject to frequent wet cleaning shall be integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor vermin.~~
 - (c) ~~Walls shall be washable; and, in the immediate area of plumbing fixtures, the finish shall be smooth, moisture resistant, and easily cleaned.~~
 - (d) ~~Floor and wall penetrations by pipes, ducts, conduits, etc., shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.~~
 - (e) ~~Ceilings in operating rooms shall be readily washable and without crevices that can retain dirt particles. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces except where required for fire rating.~~
- (a) The Division may grant an equivalency to allow an alternate design or functional variation from the requirements in the rules contained in this Section. The equivalency may be granted by the Division if a governing body submits a written equivalency request to the Division that indicates the following:
- (1) the rule citation and the rule requirement that will not be met;
 - (2) the justification for the equivalency;
 - (3) how the proposed equivalency meets the intent of the corresponding rule requirement; and
 - (4) a statement by the governing body that the equivalency request will not reduce the safety and operational effectiveness of the facility design and layout.
- The governing body shall maintain a copy of the approved equivalence issued by the Division.
- (b) If the rules, codes, or standards contained in this Subchapter conflict, the most restrictive requirement shall apply.

Authority G.S. 131E-149.

10A NCAC 13C .1405 MECHANICAL REQUIREMENTS
10A NCAC 13C .1406 PLUMBING AND OTHER PIPING SYSTEMS
10A NCAC 13C .1407 ELECTRICAL REQUIREMENTS

Authority G.S. 131E-149.

10A NCAC 13C .1408 GENERAL
10A NCAC 13C .1409 LIST OF REFERENCED CODES AND STANDARDS

Authority G.S. 131E-149.

10A NCAC 13C .1410 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

Authority G.S. 131E-149.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to readopt with substantive changes the rules cited as 10A NCAC 13F .0207, .1206; 13G .0207, .1207 and repeal through readoption the rules cited as 10A NCAC 13F .0203, .0214 and 13G .0214.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: January 1, 2020

Public Hearing:

Date: August 7, 2019

Time: 9:00 a.m.

Location: Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapters 10A NCAC 13F, Licensing of Adult Care Homes of Seven or More Beds, and 10A NCAC 13G, Licensing of Family Care Homes, seven proposed readoption rules were part of the 97 total rules determined as "Necessary With Substantive Public Interest," therefore requiring readoption. With input from stakeholders, substantial changes have been proposed to the readoption rules to update the process that has been followed in the regulation of licensed Adult Care Homes and Family Care Homes in N.C. An additional intent of the readoptions is to make the rules of these two types of assisted living residences comparable, if not the same, for regulatory

efficiency since they both house the same type of residents as permitted by law. Rules 10A NCAC 13F .0203, .1214 and 10A NCAC 13G .0214 are not necessary because G.S. 131D-2.4 and 131D-2.7 govern the criteria for the requirements in the rules, therefore they are proposed for repeal through readoption.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F – LICENSING OF ADULT CARE HOMES OF SEVEN OR MORE BEDS

SECTION .0200 – LICENSING

10A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

Authority G.S. 131D-2.4; 131D-2.5; 131D-4.5; 131D-2.16; 143B-165.

10A NCAC 13F .0207 CHANGE OF LICENSEE

~~When a licensee plans to sell the adult care home business, the following procedure is required. Prior to the sale of an adult care home business, the current and prospective licensee shall meet the requirements of this Rule.~~

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social ~~services~~ services.

and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.

- (2) If the prospective licensee plans to purchase the building, the prospective licensee shall provide the Healthcare Planning and Certificate of Need Section of the Division of Health Service Regulation with prior written notice as required by G.S. ~~13E-184(a)(8)~~ 131E-184(a)(8) prior to the purchase of the building.
- (3) ~~If the licensee is changing but the ownership of the building is not, the applicant for the license shall request in writing an exemption from review from the Certificate of Need Section.~~
- (4)(3) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
 - (a) the ~~Initial License Application Change~~ Licensure Application for Adult Care Home (7 or more Beds) ~~which that is~~ available on the internet website, <http://facility-services.state.nc.us/gepage.htm>, www2.ncdhhs.gov/dhsr/acls/pdf/acch_gapp.pdf ~~at no cost or from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708; and~~ includes the following:
 - (i) facility administrator and building owner information;
 - (ii) operation disclosure including new licensee information and management company, if any; and
 - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
 - (b) a ~~current~~ fire and building safety inspection report from the local fire ~~marshal;~~ marshal dated within the past 12 months;
 - (c) a ~~current~~ sanitation report from the sanitation division of the county health ~~department;~~ department dated within the past 12 months; and
 - (d) a nonrefundable license fee as required by ~~G.S. 131D-2(b)(4);~~ G.S. 131D-2.5.
- (5) ~~Following the licensing of the facility to the new licensee, a survey of the facility shall be made by program consultants of the Division of Health Service Regulation and an adult home specialist of the county department of social services.~~

10A NCAC 13F .0214 SUSPENSION OF ADMISSIONS

Authority G.S. 131D-2.7.

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13F .1206 ADVERTISING MARKETING

~~The~~ An adult care home may ~~advertise~~ market provided:

- (1) ~~The the~~ name used is as it appears on the ~~license.~~ license;
- (2) ~~Only~~ only the services and accommodations for which the home is licensed are ~~used.~~ used; and
- (3) ~~The the~~ home is ~~listed under proper classification in telephone books, newspapers or magazines.~~ classified by licensure status.

Authority G.S. 131D-2.1; 131D-2.16; 143B-165.

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .0200 - LICENSING

10A NCAC 13G .0207 CHANGE OF LICENSEE

~~When a licensee wishes to sell or lease the family care home business, the following procedure is required:~~

- (1) ~~The licensee shall notify the county department of social services that a change is desired. When there is a plan for a change of licensee and another person applies to operate the home immediately, the licensee shall notify the county department and the residents or their responsible persons. The county department shall talk with the residents, giving them the opportunity to make other plans if they so desire.~~
- (2) ~~The county department of social services shall submit all forms and reports specified in Rule .0204 (b) of this Subchapter to the Division of Health Service Regulation.~~
- (3) ~~The Division of Health Service Regulation shall review the records of the facility and may visit the home.~~
- (4) ~~The licensee and prospective licensee shall be advised by the Division of Health Service Regulation of any changes which must be made to the building before licensing to a new licensee can be recommended.~~
- (5) ~~Frame or brick veneer buildings over one story in height with resident services and accommodations on the second floor shall not be considered for re-licensure.~~

Prior to the sale of a family care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social services, and the

Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165.

residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.

(2) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:

(a) the Change Licensure Application for Family Care Home (2 to 6 Beds) that is available on the internet website, www2.ncdhhs.gov/dhsr/acls/pdf/fcch_gapp.pdf at no cost and includes the following:

(i) facility, administrator and building owner information;

(ii) operation disclosure including new licensee information and management company, if any; and

(iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;

(b) a fire and building safety inspection report from the local fire marshal dated within the past 12 months;

(c) a sanitation report from the sanitation division of the county health department dated within the past 12 months; and

(d) a nonrefundable license fee as required by G.S. 131D-2.5.

Authority G.S. 131D-2.4; 131D-2.16; 143B-165.

10A NCAC 13G .0214 SUSPENSION OF ADMISSIONS

Authority G.S. 131D-2.7.

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13G .1207 ADVERTISING MARKETING

The administrator A family care home may use acceptable methods of advertising market provided:

(1) The the name used is as it appears on the license. license;

(2) Only only the services and accommodations for which the home is licensed are used. used; and

(3) The the home is listed under proper classification in telephone books, newspapers or magazines. classified by licensure status.

Authority G.S. 131D-2.1; 131D-2.16; 143B-165.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission

intends to amend the rules cited as 12 NCAC 09B .0313; 09F .0102, and .0105.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

Proposed Effective Date: *October 1, 2019*

Public Hearing:

Date: *August 14, 2019*

Time: *10:00 a.m.*

Location: *Wake Technical Community College Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27502*

Reason for Proposed Action: *To specify the training requirements for School Resource Officers. To clarify the purpose and requirements for several of the topical areas of instruction received by Conceal Carry Handgun Instructor students.*

Comments may be submitted to: *Charminique D. Williams, Post Office Box 149 Drawer, Raleigh, NC 27602; phone (919) 779-8206; email cdwilliams@ncdoj.gov*

Comment period ends: *August 16, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (>= \$1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required**

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

**SECTION .0300 - MINIMUM STANDARDS FOR
CRIMINAL JUSTICE INSTRUCTORS**

**12 NCAC 09B .0313 CERTIFICATION AND
TRAINING FOR SCHOOL RESOURCE OFFICERS**

~~(a) The School Resource Officer training course for law enforcement officers shall provide the trainee with the skills and knowledge to perform in the capacity of a School Resource Officer. The course shall be for a period of 40 hours. School Resource Officer (SRO) is defined as any law enforcement officer assigned to one or more public schools within a public school unit, who works in a school at least 20 hours per week for more than 12 weeks per calendar year to assist with all of the following:~~

- ~~(1) School safety.~~
- ~~(2) School security.~~
- ~~(3) Emergency preparedness.~~
- ~~(4) Emergency response.~~
- ~~(5) Any additional responsibilities related to school safety or security assigned by the officer's employer while the officer is acting as a School Resource Officer.~~

~~These requirements shall be consistent with any written memorandum of understanding between the public school unit and the law enforcement agency governing the School Resource Officer.~~

~~(b) The "School Resource Officer Training" course published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:~~

~~Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602~~

~~and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:~~

~~North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385~~

~~(b) Law enforcement officers assigned by their agency to perform duties as a School Resource Officer shall:~~

- ~~(1) have been issued general certification by the North Carolina Criminal Justice Education and Training Standards Commission as a law enforcement officer; and~~
- ~~(2) have until December 31, 2020 to complete the Basic School Resource Officer training course, if they are acting in the capacity of a School Resource Officer between October 1, 2018 and December 31, 2019. Any officer assigned as a School Resource Officer effective October 1, 2010 or later shall complete the "School Resource Officer Training" course pursuant to Paragraph (f) of this Rule, within one year after being assigned as a School Resource Officer. Law enforcement officers who previously completed the training pursuant to Paragraph (f) of this Rule and who have been continually~~

assigned as an SRO pursuant to Paragraph (a) of this Rule shall be credited with completion of the "Basic School Resource Officer Training."

(c) A law enforcement officer assigned to one or more public schools within a public school unit, who works in a school at least 20 hours per week for more than 12 weeks per calendar year and who has not completed the initial training as established by Paragraph (f) of this Rule shall not work in a school as a School Resource Officer until the officer has completed the initial training as established by Paragraph (f) of this Rule.

(d) The agency head shall submit to the Criminal Justice Standards Division a Form F-20 Commission School Resource Officer Assignment Form for the person(s) selected to act as a School Resource Officer for the agency. The Form F-20 is located on the agency's website: <https://ncdoj.gov/getdoc/576c353c-0dcb-4c84-8cc4-c9d17985541f/SRO-form.aspx> and must be completed in its entirety.

(e) The term of certification as a School Resource Officer is indefinite, provided the School Resource Officer completes during each calendar year a minimum of one hour of School Resource Officer refresher training authored by North Carolina Justice Academy. For School Resource Officers who complete the basic SRO training requirement in 2020 or earlier, this requirement becomes effective January 1, 2021. Otherwise, this requirement becomes effective the year following the officer's successful completion of the Basic School Resource Officer Training course. A certified School Resource Officer who has not completed the refresher training during a calendar year as established by this section shall not work in a school as a School Resource Officer until the officer has completed the required refresher training as established by this Section.

(e) Law Enforcement officers assigned by their agency to perform duties as a School Resource Officer shall:

- (1) have been issued general certification by the NC Criminal Justice Education and Training Standards Commission as a law enforcement officer; and
- (2) have completed, or complete within one year after being assigned as a School Resource Officer, the School Resource Officer the "School Resource Officer Training" course pursuant to Paragraph (b) of this Rule.

(f) The School Resource Officer training course for law enforcement officers shall provide the trainee with the skills and knowledge to perform in the capacity of a School Resource Officer. The "School Resource Officer Training" course authored by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99

Salemburg, North Carolina 28385

Authority G.S. 17C-6; 17C-10.

**SUBCHAPTER 09F - CONCEALED HANDGUN
TRAINING**

**SECTION .0100 - CONCEALED HANDGUN TRAINING
PROGRAM**

12 NCAC 09F .0102 TOPICAL AREAS

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to explain the following:
 - (a) the types of situations ~~that in which~~ the use of deadly physical force would be justified;
 - (b) list the areas where the carrying of a concealed handgun is prohibited;
 - (c) the requirements ~~of~~ for handgun storage under G.S. 14-315.1; and
 - (d) the laws governing the carrying of a concealed handgun.

The instructor shall determine the student's level of understanding of the relevant legal issues by administering a written examination.

- (2) Handgun Nomenclature: ~~The students shall be able either verbally or in writing to list the instructor shall identify to the students the primary parts of their personal handguns: the revolver and semiautomatic handgun.~~
- (3) Handgun Safety: The students shall be able to:
 - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
 - (b) list four methods of safely storing a handgun and choose the method most appropriate for their personal use;
 - (c) describe safety issues relating to the safe carry of a handgun; and
 - (d) determine the proper storage of their handguns when there are minors in the home.
- (4) Handgun Fundamentals: The ~~students~~ instructor shall demonstrate to the students: be able to:
 - (a) ~~demonstrate~~ how to load both a revolver and a semiautomatic handgun;
 - (b) ~~demonstrate~~ how to unload both a revolver and a semiautomatic handgun;
 - (c) ~~describe~~ the operational characteristics of ~~their handguns; and the revolver and the semiautomatic handgun.~~

~~(d) achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.~~

- (5) Marksmanship Fundamentals: The student shall be able to:
 - (a) demonstrate a proper handgun grip;
 - (b) demonstrate either the Weaver or Isosceles Stance;
 - (c) describe the elements of sight alignment and sight picture; and
 - (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The ~~students~~ instructor shall ~~be able to~~ demonstrate to the students the draw or presentation of the revolver and semiautomatic handgun with their handguns: a variety of holster types.
- (7) Cleaning and Maintenance: The ~~students~~ instructor shall ~~be able to:~~ demonstrate to the student:
 - (a) ~~demonstrate~~ how to "field strip" the handguns if ~~the their handguns~~ handgun can be field stripped;
 - (b) ~~describe~~ how to perform a "Function Check" on ~~their personal handguns; and~~
 - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handguns.
- (8) Ammunition: The ~~students~~ instructor shall ~~be able to~~ list and explain the four components of handgun ammunition.
- (9) Proficiency Drills: ~~The students shall be able to:~~
 - (a) ~~demonstrate how to check a handgun in order to ensure that it is safe;~~
 - (b) ~~during range exercises, demonstrate how to fire a handgun from a ready position;~~
 - (c) ~~during range exercises, demonstrate the ability to fire a handgun from various distances; and~~
 - (d) ~~during range exercises, achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.~~

Authority G.S. 14-415.12.

**12 NCAC 09F .0105 INSTRUCTOR
RESPONSIBILITIES**

In delivering the "Concealed Carry Handgun Training" course the instructor shall:

- (1) have a valid Concealed Carry Handgun instructor certification issued by the Criminal Justice Standards Division;
- (2) file a copy of the proposed firearms course description, outline, and proof of instructor

- certification along with a written request to conduct the "Concealed Carry Handgun Training" course for approval by the Commission prior to delivery of any instruction required by G.S. 14-415.12;
- (3) file a copy of all modifications;
- (4) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal of the Commission;
- (5) if a Concealed Carry Handgun Instructor relinquishes his or her certification and wants to transfer his or her assigned participants' certificates, to another Concealed Carry Handgun instructor a written request shall be submitted to the Criminal Justice Standards Division Director for approval. The written request shall include the following:
- (a) instructor name and identification number;
- (b) name of business;
- (c) phone number and email address;
- (d) recipient instructor name, identification number;
- (e) business name;
- (f) phone number, email address; and
- (g) list of the assigned certificate numbers for participants to be transferred.
- (6)(5) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Carry Handgun Training" course;
- (7)(6) conduct the training consistent with the guidelines established in 12 NCAC 09F .0102;
- (8)(7) administer a written examination examination, that includes at a minimum questions provided by the Commission, which the student shall pass with a minimum score of 70 percent on the questions provided by the Commission; to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (9)(8) administer a proficiency examination that demonstrates the student is competent in the firing and safe handling of a handgun. Such examination shall include the following:
- (a) The student fires 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances;
- (b) At each yard distance the student shall fire a minimum of ten rounds; and
- (c) 21 of the 30 rounds fired by the student hit the target.

- (d) If the proficiency examination includes the parameters in (9)(a) and be above, and additional rounds are fired, the student shall pass with a minimum score of 70 percent on that course of fire.

Authority G.S. 14-415.12; 14-415.13.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .0546, and amend the rule cited as 15A NCAC 02D .1104.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Proposed Effective Date: January 1, 2020

Public Hearing:

Date: July 22, 2019

Time: 6:00 p.m.

Location: DEQ Green Square Office Building, 1st Floor Training Room (#1210), 217 West Jones Street, Raleigh NC 27603

Date: July 23, 2019

Time: 6:00 p.m.

Location: Cape Fear Community College, Union Station, 502 N. Front St., Wilmington, NC 28401

Reason for Proposed Action: *To receive comments on the adoption of the Control of Emissions from Log Fumigation Operations rule and the amendment of the Toxic Air Pollutant Guidelines rule. Also to receive comment on the accompanying fiscal note for the proposed adoption and amendment.*

The Division of Air Quality identified that the general public adjacent to log fumigation operations may experience both acute exposures, as well as longer-term chronic exposures to methyl bromide as a result of these operations. Neurological and respiratory effects are of greatest concern from exposure to methyl bromide. To protect the health of all persons that may live or work in areas subject to airborne releases of methyl bromide from these operations, the Environmental Management Commission (EMC) is proposing to adopt a rule that regulates these emissions using an Acceptable Ambient Level (AAL), which limits the concentration of methyl bromide or other fumigants beyond the fence line of a facility.

To determine the AAL for methyl bromide, the Division of Air Quality provided a report and other informational materials to the North Carolina Secretaries' Science Advisory Board (SAB). On the basis of the information, the SAB recommended a range of AAL values to be considered by the EMC for methyl bromide as 0.002 mg/m³ to 0.005 mg/m³ and a 24-hour averaging time for the

protection of public health. A copy of the final report submitted to the SAB can be found at <https://files.nc.gov/ncdeq/GenX/SAB/Methyl-Bromide-AAL-FINAL-0412019-signed.pdf>

The proposed rule and amendment are as follows:

15A NCAC 02D .0546, Control of Emissions from Log Fumigation Operations, is proposed for adoption to establish emission control requirements for hazardous air pollutant and toxic air pollutant emissions from bulk, chamber, and container log fumigation operations;

15A NCAC 02D .1104, Toxic Air Pollutant Guidelines, is proposed for amendment to add methyl bromide to the toxic air pollutant list with the value of 0.005 mg/m³ for a 24-hour averaging period.

The EMC is also requesting comment on a value within a range of AALs from 0.005 mg/m³ to 0.078 mg/m³ for methyl bromide. The AAL value of 0.005 mg/m³ is based on the upper bound value recommended by the SAB. The AAL value of 0.078 mg/m³ is based on the minimal risk level (intermediate) from the April 2018 Draft for Public Comment Toxicological Profile for Bromomethane prepared by the Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency of the U.S. Department of Health and Human Services. A copy of this profile can be found at <https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=822&tid=160> The text of the rules is available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

Comments may be submitted to: Patrick Knowlson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8711; fax (919) 715-0717; email daq.publiccomments@ncdenr.gov (Please type "Log Fumigation" in subject line)

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☐ Local funds affected
- ☒ Substantial economic impact (>= \$1,000,000)

- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS

(a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and toxic air pollutants from log fumigation operations.

(b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A NCAC 02Q apply:

- (1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an impermeable surface and covered with a weighted-down tarpaulin.
- (2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is specifically used for fumigation. Chambers used for fumigation may be either atmospheric or vacuum type.
- (3) "Container log fumigation" means the fumigation of logs inside a container and where the doors of the container are closed and sealed.
- (4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests within the logs.
- (5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the container or chamber for the purposes of treating the logs for insects and other pests to prevent the transfer of exotic organisms.
- (6) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.
- (7) "Public right-of-way" means an access area where people can reasonably be expected to be present for any or all parts of a 24-hour period.
- (8) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

(c) Applicability. This Rule applies to new, existing, and modified bulk, chamber, and container log fumigation operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

(d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D .1106, 15A NCAC 02Q .0709, and .0710.

(e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible and legible at the

fence or property line closest to any public right-of-way. The signs shall remain in place at all times and shall conform to the format for placards mandated by the federally approved fumigant label.

(f) Monitoring, Recordkeeping and Reporting. The owner or operator of a bulk, chamber, or container log fumigation operation shall comply with the requirements pursuant to 15A NCAC 02D .0600.

- (1) The owner or operator shall send an initial notification of commencement of operations to the appropriate Division of Air Quality regional office within 15 days of initial fumigation start-up.
- (2) The owner or operator shall submit a quarterly summary report, with the original signature of the Permittee or the authorized responsible official, of the monitoring and recordkeeping activities postmarked no later than 30 days after the end of each calendar year quarter. The report shall contain the following:

(A) company name, address, and facility ID number;

- (B) calendar year quarter represented by the report;
- (C) daily and total fumigant usage in pounds for each quarter;
- (D) a summary of the monitoring data required by the permit that was collected during the quarter; and
- (E) a summary of exceedances from the levels established in the permit that occurred during the quarter of any monitoring parameters.

(g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the compliance approach chosen by the facility involves the purchase and installation of a control device. New and modified facilities shall achieve compliance with this Rule upon start-up.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the facility's premises to any significant ambient air concentration that may adversely affect human health, except as allowed pursuant to 15A NCAC 02Q .0700. In determining these significant ambient air concentrations, the Division shall be governed by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure, except for asbestos:

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.1 x 10 ⁻⁶			
asbestos (1332-21-4)	2.8 x 10 ⁻⁶ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2 x 10 ⁻⁴			
benzidine and salts (92-87-5)	1.5 x 10 ⁻⁸			
benzo(a)pyrene (50-32-8)	3.3 x 10 ⁻⁵			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1 x 10 ⁻⁶			
beryllium chloride (7787-47-5)	4.1 x 10 ⁻⁶			
beryllium fluoride (7787-49-7)	4.1 x 10 ⁻⁶			
beryllium nitrate (13597-99-4)	4.1 x 10 ⁻⁶			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			

PROPOSED RULES

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
bis-chloromethyl ether (542-88-1)	3.7 x 10 ⁻⁷			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	4.4 x 10 ⁻⁴			
cadmium (7440-43-9)	5.5 x 10 ⁻⁶			
cadmium acetate (543-90-8)	5.5 x 10 ⁻⁶			
cadmium bromide (7789-42-6)	5.5 x 10 ⁻⁶			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7 x 10 ⁻³			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3 x 10 ⁻³			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3 x 10 ⁻²			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0 x 10 ⁻⁴			
ethylene dichloride (107-06-2)	3.8 x 10 ⁻³			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7 x 10 ⁻⁵			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6 x 10 ⁻⁸			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl bromide (74-83-9)		0.005		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4 x 10 ⁻²		1.7	

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1 x 10 ⁻⁶			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0 x 10 ⁻⁵			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9 x 10 ⁻¹			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3 x 10 ⁻⁵			
soluble chromate compounds, as chromium (VI) equivalent		6.2 x 10 ⁻⁴		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0 x 10 ⁻⁹			
1,1,2,2-tetrachloroethane (79-34-5)	6.3 x 10 ⁻³			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9 x 10 ⁻²			
vinyl chloride (75-01-4)	3.8 x 10 ⁻⁴			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 13B .1201-.1204 and repeal through readoption the rules cited as 15A NCAC 13B .1205-.1207.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: November 1, 2019

Public Hearing:

Date: July 9, 2019

Time: 6:00 p.m.

Location: NCDEQ Green Square Building, 217 West Jones Street, Raleigh, NC 27603, Room 1210

Reason for Proposed Action: Rules 15A NCAC 13B .1201-.1207 Medical Waste Management are proposed for readoption

to comply with the Rule Review requirements pursuant to G.S. 150B-21.3A. Proposed amendments to the rules will provide clarification based on stakeholder input to the requirements for packaging, temporary storage locations, the use of ozonation as a treatment method, and disposal options for noninfectious medical waste, trace chemotherapy waste, and non-hazardous pharmaceutical waste. Proposed amendments will also give clarification on facility operations plan requirements, the process for submitting alternative treatment method requests, make technical corrections and provide updates to general information, give clarification of vague or unclear language, and remove redundant or unnecessary language by consolidating the seven rules into four rules.

Comments may be submitted to: Jessica Montie, NC DEQ Division of Waste Management, Attn: Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8247; email jessica.montie@ncdenr.gov

Comment period ends: August 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1200 - MEDICAL WASTE MANAGEMENT

15A NCAC 13B .1201 DEFINITIONS

For the purpose of the this Section, the following definitions apply:

- (1) "Blood and body fluids" means liquid blood, serum, plasma, other blood products, emulsified human tissue, spinal fluids, and pleural and peritoneal fluids. Blood and body

fluids does not include dialysates, feces, or urine if not removed during surgeries and autopsies. Dialysates are not blood or body fluids under this definition.

- (2) "Generator" and "Generating facility" means mean any business, integrated medical facility, and volunteer or non-profit healthcare services where medical waste is produced, first becomes a waste, including but not limited to any medical or dental facility, mortuary, funeral home, laboratory, veterinary hospital, hospital, and blood bank. bank; but does not include households.
- (3) "Integrated medical facility" means one or more health service facilities as defined in G.S. 131E-176(9b) that are:
 - (a) located in a single county or two contiguous counties;
 - (b) affiliated with a university medical school or that are under common ownership and control; and
 - (c) serve a single service area.
- (4) "Medical waste" as means the term defined in G.S. 130A-290(17a), 130A-290(18).
- (5) "Microbiological waste" means the term defined in Rule .0101(26) of this Subchapter. cultures and stocks of infectious agents, including but not limited to specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.
- (6) "~~Microwave treatment~~" means treatment by microwave energy for sufficient time to render waste non-infectious.
- (7) "~~Off site~~" means any site which is not "on-site".
- (8) "~~On site~~" means the same or geographically contiguous property which may be divided by public or private right of way.
- (6) "Non-hazardous pharmaceutical waste" is a medical waste. It is a medical drug that is expired, unused, contaminated, damaged, or no longer needed or used for its prescribed purpose and that is not a hazardous waste as defined in G.S. 130A-290(8).
- (7) "Nuisance" means odorous outside of the property boundary or transport vehicle; or attracting vermin or disease vectors.
- (8) "Package" is the total contents of a box, drum, or vessel containing medical waste, including labeling and markings.
- (9) "Pathological waste" means the term defined in Rule .0101(31) of this Subchapter. human tissues, organs and body parts; and the carcasses and body parts of all animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in vivo testing of

- pharmaceuticals, or that died with a known or suspected disease transmissible to humans.
- (10) "Record" means any data required to be kept on file by the operator or submitted to the Division in accordance with the rules of this Section. A record may be in hard copy (paper) or electronic format that is legible and in English.
- (11)(10) "Regulated Medical Waste" means the term defined in Rule .0101(34) of this Subchapter. blood and body fluids in individual containers in volumes greater than 20 ml, microbiological waste, and pathological waste that have not been treated pursuant to Rule .1207 of this Section.
- (12) "Responsible party" means the entity that is in possession of and has accepted the regulated medical waste.
- (13)(14) "Sharps" means the term defined is G.S. 130A-309.26(a)(1). and includes needles, syringes with attached needles, capillary tubes, slides and cover slips, and scalpel blades.
- (14) "Trace chemotherapy waste" means no more than three percent by weight of a medical drug used for chemotherapy. Trace chemotherapy waste includes gowns, gloves, wipes, and other handling, preparation, administration, cleaning, and decontamination items associated with chemotherapy.
- (15) "Transfer or storage operations" is the act of, and process by which, regulated medical waste is removed from a transport vehicle and placed in another transport vehicle or in storage awaiting transport.
- (16) "Transport vehicle" means a vehicle or other conveyance type used to transport regulated medical waste to and from transfer or storage operations or to and from a treatment facility.
- (17)(12) "Treatment" as means the term defined in G.S. 130A-309.26(a)(2).
- (18) "Treatment facility" means a regulated medical waste treatment facility permitted by the Division in accordance with the rules of this Subchapter.
- (19) "Solid waste" means the term defined in G.S. 130A-290(a)(35).

Authority G.S. 130A-309.26.

15A NCAC 13B .1202 GENERAL REQUIREMENTS FOR MEDICAL WASTE

- (a) Medical waste is subject to the ~~requirements in all applicable rules in 15A NCAC 13B.~~ 13B, "Solid Waste Management."
- (b) Sharps and other sharp objects such as syringes with attached needles, capillary tubes, slides and cover slips, lancets, auto injectors, connection needles and sets, exposed ends of dental wires, and objects that can penetrate the skin At the generating facility, sharps shall be placed in a rigid, leak-proof when in an upright position, and puncture-resistant container, and container which is rigid, leak proof when in an upright position and

~~puncture resistant. Contained sharps shall not be compacted prior to off-site transportation. transportation unless placed in a sealed compactor unit that is hauled off for disposal by the transporter. After leaving the generating facility, the container and its contents shall be handled in a manner that avoids human contact with the sharps.~~

(c) Blood and body fluids in individual containers in volumes of 20 milliliters ml or less which are not stored in a secured area restricted to authorized personnel prior to off site transportation shall be packaged in accordance with the regulated medical waste packaging requirements as described in Rule .1204(a)(1) of this Section or in a container suitable for sharps. Containers of blood and body fluids which are packaged in accordance with Rule .1204(a)(1) of this Section or in a container suitable for sharps as required by this Rule shall be stored in a secured area and shall not be compacted prior to off-site transportation.

(d) Regulated medical waste shall not be compacted. compacted prior to treatment.

(e) Only the responsible party or their designated representative shall have access to regulated medical waste.

(f) Medical waste shall not become putrescent. Putrescent medical waste shall be disposed of or treated within three calendar days.

(g) Medical waste shall not become a nuisance.

(h) Medical waste accepted at transfer or storage operations or a treatment facility shall not be subject to the requirements of Rule .1203(a) and (b)(2) of this Section.

(i) Medical waste treatment and disposal methods:

- (1) Blood and body fluids in individual containers in volumes greater than 20 milliliters shall be disposed of by sanitary sewer if the local sewage treatment authority has been notified; or treated by incineration or steam sterilization.
- (2) Microbiological waste shall be treated by incineration, steam sterilization, ozonation, microwave, or chemical treatment.
- (3) Non-hazardous pharmaceutical waste shall be treated by incineration, returned to the vendor, reused, or disposed of at a municipal solid waste landfill.
- (4) Pathological waste shall be treated by incineration or ozonation.
- (5) Trace chemotherapy waste shall be treated by incineration or ozonation.
- (6) Noninfectious medical waste and blood and body fluids in individual containers in volumes of 20 ml or less may be recycled, disposed of in a municipal solid waste landfill or sanitary sewer, or treated by the treatment methods as described in this Paragraph.

(j) Medical waste treated at the generating facility is not subject to the requirements of Paragraphs (o), (p), and (q) of this Rule, and Rule .1204(b)(1), (b)(3), and (b)(8) of this Section.

(k) Crematoriums are not subject to the requirements of this Section.

(l) Transport vehicles, transfer or storage operations, and treatment facilities shall:

- (1) be kept free of leaked, spilled, and unpackaged medical waste;

- (2) not contain porous floor coverings;
- (3) be ventilated;
- (4) not create a nuisance; and
- (5) have a method of leak control or spill cleanup, including decontamination.

(m) A responsible party shall be present when regulated medical waste is being transferred by means of transfer or storage operations.

(n) Regulated medical waste shall be transported and stored in a manner that prevents exposure to the environment and inclement weather.

(o) Unrefrigerated regulated medical waste shall be treated within 21 calendar days of shipment from the generator.

(p) Refrigeration at an ambient temperature of a maximum of 45 degrees Fahrenheit (7.22 degrees Celsius) shall be maintained for regulated medical waste not treated within 21 calendar days of shipment from the generator.

(q) All regulated medical waste shall be treated within 60 calendar days of shipment from the generator.

Authority G.S. 130A-309.26.

15A NCAC 13B .1203 GENERAL REQUIREMENTS FOR REGULATED MEDICAL WASTE GENERATORS, TRANSPORTERS, AND TRANSFER AND STORAGE OPERATIONS

~~(a) Regulated medical waste shall be treated prior to disposal. Acceptable methods of treatment are as follows:~~

- ~~(1) blood and body fluids in individual containers in volumes greater than 20 ml—Incineration or sanitary sewage systems, provided the sewage treatment authority is notified;~~
- ~~(2) microbiological waste—Incineration, steam sterilization, microwave treatment, or chemical treatment;~~
- ~~(3) pathological wastes—Incineration.~~

~~(b) Other methods of treatment shall require approval by the Division.~~

~~(c) Regulated medical waste treated in accordance with Paragraph (a) of this Rule may be managed in accordance with 15A NCAC 13B .0100 .0700.~~

~~(d) Crematoriums are not subject to the requirements of Rule .1207(3) of this Section.~~

~~(e) A person who treats Regulated medical waste at the generating facility or within an integrated medical facility is not subject to the storage and record keeping requirements of Rule .1207(1) of this Section.~~

~~(f) Generating facilities and integrated medical facilities in operation on October 1, 1990 that incinerate Regulated medical waste are not subject to the requirements of Rule .1207(3)(a 1) of this Section until January 1, 1995.~~

(a) Regulated medical waste packaging requirements:

- (1) All Sections of the Code of Federal Regulations (CFR) cited in this Paragraph are hereby incorporated by reference, including subsequent amendments and editions and can be accessed at no cost at <https://www.gpo.gov/>.

(2) Regulated medical waste may be packaged in accordance with 49 CFR 173.134, 49 CFR 173.196, 49 CFR 173.197, or 49 CFR 173.199.

(3) A plastic film bag shall be used as inner packaging, unless it is not required per the regulated medical waste type when used in conjunction with one of the package designs pursuant to Subparagraph (2) of this Paragraph. The plastic film bag used as inner packaging shall be sealed to prevent leaks.

(5) A rigid box, drum, or vessel constructed to prevent leakage shall be used as outer packaging.

(6) Outer package labeling shall be written in English.

(7) Outer packaging shall contain the universal biohazard symbol as described in 29 CFR 1910.1030(g).

(8) Each package shall be handled to prevent leaks, damage, and changes to the package, labeling, and markings.

(9) Labels and markings on the outside of each package shall contain the following information:

- (A) state that the content is an "infectious substance" or a "biohazard;"
- (B) the generator name, physical address, and phone number;
- (C) the transporter name, physical address, and phone number;
- (D) the treatment facility name, physical address, and phone number; and
- (E) the date of shipment from the generating facility.

The requirement in Part (E) of this Subparagraph does not apply to customer-loaded trailers, except that all packages accessible from the cargo area door(s) shall be marked with the date of shipment from the generator prior to transport from the generating facility. The remaining medical waste packages shall be marked with the date of shipment from the generator when they are removed from the customer loaded trailer unless the medical waste packages are treated at that site within 24 hours.

(b) Generator requirements:

(1) The generating facility shall package medical waste by treatment method type in accordance with Rule .1202(i) of this Section.

(2) The generating facility shall maintain a record of each shipment of regulated medical waste transported off-site for a period of three years that includes the following information:

- (A) the number of packages;
- (B) the transporter name, physical address, and phone number;
- (C) the treatment facility name, physical address, and phone number; and

(D) the date of shipment from the generating facility.

The requirements of this Subparagraph do not apply to generating facilities that generate less than 50 pounds of regulated medical waste per month.

(c) Transporter requirements:

- (1) The transporter shall not accept regulated medical waste that does not meet the requirements of Paragraph (a) of this Rule.
- (2) The universal biohazard symbol shall be displayed on the outside of a transport vehicle on both sides and rear of the vehicle's cargo area, shall be legible, and shall not be obstructed from view.
- (3) Transport vehicles shall only transport medical waste for treatment, other solid wastes, and supplies related to the handling of solid wastes. If a medical waste package leaks or spills, all of the contents, except for hazardous waste, within the same storage area of the transport vehicle as the leaking or spilled package shall be treated at a medical waste treatment facility. If the solid waste that leaked or spilled is a hazardous waste, all of the solid waste within the same storage area of the transport vehicle as the leaking or spilled package shall be brought to a hazardous waste treatment facility.
- (4) Transport vehicles shall be free of medical waste and disinfected with a mycobacteriocidal disinfectant before being reused if any packages spilled or leaked while in the vehicle.
- (5) The vehicle operator shall keep a contingency plan as described in Rule .1204(b)(4)(H) of this Section in the transport vehicle and shall be trained to implement the contingency plan prior to transporting medical waste.
- (6) The transporter shall be in compliance with Rule .1202(o), (p), and (q) of this Section.

(d) Transfer or storage operations requirements:

- (1) The responsible party for transfer or storage operations occurring at a treatment facility shall include a description of the transfer or storage operations in the facility operations plan submitted to the Division in accordance with Rule .1204(b)(4) of this Section.
- (2) The responsible party for transfer or storage operations occurring at a location other than a treatment facility shall submit a record to the Division within 14 calendar days of commencing transfer or storage operations, and once every two years thereafter, while the responsible party is managing the transfer or storage operations. The record shall include the following information:
 - (A) the name, mailing address, physical address, office and mobile phone numbers, and email address for the responsible party(s) and operator(s);

(B) county GIS property data for the location where transfer or storage operations occur;

(C) procedures for how the medical waste will be received, handled, stored, or transferred;

(D) the frequency that transfer or storage operations occur;

(E) the amount of medical waste that is expected to be on site at the transfer or storage operations; and

(F) additional information that the Division may request pertaining to the transfer or storage operations if it is necessary to determine compliance with the rules of this Subchapter.

The responsible party shall submit an updated record to the Division within 14 calendar days if any of the information required to be submitted by this Subparagraph changes.

(3) If the transfer or storage operations cease, the responsible party shall submit to the Division a record within 14 calendar days. The record shall include the following information:

(A) a signed statement by the responsible party(s) that transfer or storage operations have ceased and all medical waste has been removed;

(B) digital pictures of the area that was utilized for transfer or storage operations taken after operations have ceased and all medical waste has been removed; and

(C) additional information that the Division may request pertaining to the transfer or storage operations if it is necessary to determine compliance with the rules of this Subchapter.

(4) Within 90 days of the readopted effective date of this Rule, existing transfer or storage operations shall comply with Subparagraph (2) of this Paragraph.

(5) The transfer or storage operations shall comply with Rule .1202(o), (p), and (q) of this Section.

Authority G.S. 130A-309.26.

15A NCAC 13B .1204 REQUIREMENTS FOR GENERATORS THE TREATMENT OF REGULATED MEDICAL WASTE

~~(a) A person who ships regulated medical waste from the generating facility for off-site treatment shall meet the following requirements:~~

- ~~(1) Regulated medical waste shall be packaged in a minimum of one plastic bag placed in a rigid fiberboard box, rigid drum, or other rigid container constructed in a manner that prevents leakage of the contents. The plastic bag shall be impervious to moisture and have a strength~~

~~sufficient to preclude ripping, tearing or bursting the waste filled bag under normal conditions of usage and handling. Each bag shall be constructed of material of sufficient single thickness strength to pass the 165 gram dropped dart impact resistance test as prescribed by Standard D 1709 91 of the American Society for Testing and Materials, which is incorporated by reference including subsequent amendments and editions, and certified by the bag manufacturer. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina. Copies may be requested by mail at American Society for Testing and Materials, 1916 Race Street, Philadelphia, P.A. 19103 or by calling (215) 299 5400 for a cost of twelve dollars (\$12.00) plus one dollar and fifty cents (\$1.50) for shipping and handling unless prepaid, then the fee is twelve dollars (\$12.00).~~

- (2) ~~Regulated medical waste shall be stored in a manner that maintains the integrity of the packaging at all times.~~
- (3) ~~Each package of regulated medical waste shall be labeled with a water resistant universal biohazard symbol.~~
- (4) ~~Each package of regulated medical waste shall be marked on the outer surface with the following information:~~
 - (A) ~~the generator's name, address, and telephone number;~~
 - (B) ~~the transporter's name, address, and telephone number;~~
 - (C) ~~storage facility name, address, and telephone number, when applicable;~~
 - (D) ~~treatment facility name, address and telephone number;~~
 - (E) ~~date of shipment; and~~
 - (F) ~~"INFECTIOUS WASTE" or "MEDICAL WASTE".~~

~~(b) Records of regulated medical waste shall be maintained for each shipment and shall include the information listed in this Paragraph. This information shall be maintained at the generating facility for no less than three years.~~

- (1) ~~amount of waste by number of packages (piece count);~~
- (2) ~~date shipped off site;~~
- (3) ~~name of transporter;~~
- (4) ~~name of storage or treatment facility.~~

~~The requirements of this Paragraph shall not apply to persons who generate less than 50 pounds of regulated medical waste per month.~~

~~(c) A plan to ensure proper management of regulated medical waste shall be prepared and maintained at the generating facility.~~

(a) General requirements for treated regulated medical waste:

- (1) Treated regulated medical waste shall be covered to prevent exposure to the environment and inclement weather.
- (2) Treated regulated medical waste may be placed uncovered in or under a weather resistant structure while dewatering or while in the process of being covered.
- (3) Treated regulated medical waste shall be stored no longer than 14 calendar days after treatment unless the facility's operations plan states that the storage unit is a necessary part of the operation of the treatment process and is enclosed, sealed, and watertight.
- (4) Treated regulated medical waste storage and transport containers, compactors, trailers, and cargo bays shall be maintained in accordance with the manufacturer's specifications.
- (5) Treated regulated medical waste shall not be transported off site uncovered.
- (6) The exterior of treated regulated medical waste storage and transport containers, compactors, trailers, and cargo bays shall be free of solid waste and solid waste residue.
- (7) Treated regulated medical waste shall not become putrescent. Putrescent treated regulated medical waste shall be disposed of within three calendar days.
- (8) Treated regulated medical waste shall not become a nuisance.
- (9) Treated regulated medical waste shall be noninfectious.

(b) General requirements for treatment facilities:

- (1) The treatment facility shall be compliant with Rule .1202(o), (p), and (q) of this Section.
- (2) The treatment facility shall issue a written record notifying the generating facility if it becomes aware of a package of medical waste received that is not in compliance with Rule .1202(i) of this Section for the treatment method utilized. A copy of the record shall be maintained at the treatment facility.
- (3) The treatment facility shall maintain a record of each shipment of regulated medical waste received for treatment for a period of three years to include the following information:
 - (A) the number of packages;
 - (B) the generator name, physical address, and phone number;
 - (C) the transporter name, physical address, and phone number;
 - (D) the date each package was picked up from the generator;
 - (E) the date each package was received at the treatment facility;
 - (F) the weight of each package in pounds; and
 - (G) the date each package was treated.
- (4) The treatment facility shall submit a facility operations plan to the Division with the permit

application required in accordance with the rules of this Subchapter that shall include the following information:

- (A) the name, mailing address, physical address, office and mobile phone numbers, and email address for the responsible party(s), owner(s), and operator(s);
- (B) the physical address and the county GIS property data for the facility location;
- (C) types and estimated amounts of medical waste to be accepted at and shipped out from the facility;
- (D) a description of the treatment process or processes;
- (E) procedures for how the medical waste will be received, handled, stored, transferred, or treated at the facility;
- (F) procedures for sampling or testing required by the rules of this Section;
- (G) procedures that the facility shall use to prevent medical waste from becoming a nuisance or putrescent, and procedures for abatement if medical waste becomes a nuisance or putrescent;
- (H) contingency plan identifying risks and describing how the facility will respond to incidents or emergencies, and how regulated medical waste will be handled or redirected when facilities or transport vehicles are unavailable due to maintenance, adverse weather, or other emergencies; and
- (I) additional information that the Division may request pertaining to the facility operations if it is necessary to determine compliance with the rules of this Section.

A copy of the operations plan shall be kept at the facility and shall be available for review by the Division during facility inspections or upon request by the Division. If the information required by this Paragraph changes, the facility shall submit a revised facility operations plan to the Division and update the copies of the plan kept by the facility.

- (5) The treatment facility shall maintain a record of the disposal facility's contact information including the facility name, permit number, physical location and mailing address, and contact name and phone number.
- (6) The treatment facility shall maintain a record of the dates and tonnages of treated regulated medical waste sent for disposal.
- (7) The treatment facility shall maintain operating records and monitoring, testing, and

maintenance records required in accordance with the rules of this Section for a period of three years.

- (8) The facility shall submit an annual report to the Division in accordance with G.S. 130A-309.09D(b).

(c) Steam sterilization treatment requirements:

- (1) Steam under pressure shall be provided to maintain a temperature of not less than 250 degrees Fahrenheit for 45 minutes at 15 pounds per square inch of gauge pressure during each cycle.
- (2) The steam sterilization unit shall have a device that records the start and end time of each cycle.
- (3) The steam sterilization unit shall have a device that records the pressure and a device that records the temperature throughout each cycle.
- (4) Testing of treatment under conditions of full loading to confirm compliance with Subparagraph (a)(9) of this Rule shall be performed no less than once per week using a biological indicator of *Geobacillus stearothermophilus* spores having a population of not less than 1.0×10^4 placed within the waste load.
- (5) A record of each test performed shall be maintained and shall include the type of indicator used, the test date, the start and end times, and the test result.

(d) Incineration treatment requirements:

- (1) The Division shall not issue a solid waste management permit in accordance with the rules of this Subchapter to the treatment facility unless the Division of Air Quality (DAQ) has issued a permit for operation of the incinerator.
- (2) The treatment facility shall maintain the DAQ permit for the operation of the incinerator.
- (3) Regulated medical waste shall be subjected to a burn temperature in the primary chamber of not less than 1200 degrees Fahrenheit.
- (4) The incinerator shall have a monitoring device that records the primary chamber temperature. A record of the continuous monitoring of the primary chamber temperature while in use shall be maintained.
- (5) Interlocks or other process control devices shall be provided to prevent the introduction of regulated medical waste into the primary chamber until the secondary chamber achieves operating temperature as defined in the permit for incinerator operation issued by DAQ.
- (6) Procedures for obtaining uniform representative composite ash samples shall be submitted to the Division for approval in the facility operations plan in accordance with Rule .1204(b)(4) of this Section. Ash sampling procedures shall be approved if the procedures are compliant with the requirements of this Subchapter, are protective of human health and

- the environment, and if the samples collected using the procedures are representative of the incinerator ash shipped from the facility for disposal.
- (7) The ash samples shall be collected from the dewatered ash collection container or containers.
- (8) For the first three months of incinerator operation, the ash sampling procedures required by Subparagraph (6) of this Paragraph shall include the collection of a representative ash sample of one kilogram (2.2 pounds):
- (A) once for every eight hours of operation for an incinerator that is operated on a continuous schedule;
- (B) once for every 24 hours of operation for an incinerator that is operated on an intermittent schedule; or
- (C) once for every batch for an incinerator that is batch-loaded.
- The ash samples shall be composited in a closed container weekly and shall be mixed and reduced to a uniform ash sample. The weekly ash samples shall be composited into a monthly ash sample, and the monthly ash sample shall be analyzed.
- (9) For the remainder of the first year of incinerator operation, a representative ash sample shall be collected once per month using the procedures described in the facility operations plan. The monthly ash samples shall be composited and reduced to a uniform quarterly ash sample, and the quarterly ash samples shall be analyzed.
- (10) After the first year of incinerator operation, representative composite ash samples shall be collected using the procedures described in the facility operations plan twice per calendar year, with no less than four months between sample collection, and the samples shall be analyzed.
- (11) Ash samples required to be analyzed in accordance with Subparagraphs (8) through (10) of this Paragraph shall be analyzed in accordance with 40 CFR 261.24 for the eight metals listed in Table 1 (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver). 40 CFR 261 is incorporated by reference including subsequent amendments and editions; and can be accessed at no cost at <https://www.gpo.gov/>.
- (12) A record of the testing and analysis results shall be submitted to the Division for the first year of incinerator operation, and thereafter shall be maintained at the facility and available for inspection by the Division, and shall be submitted upon request from the Division, and shall include:
- (A) the composite ash sample date and time;
- (B) the ash sample date and time;
- (C) the ash sample identification number;
- (D) the ash sample analysis results; and
- (E) the testing laboratory name and contact information and certification number.
- (13) The Division may require the treatment facility to collect additional composite ash samples or analyze the samples for the full contaminant list in accordance with 40 CFR 261.24 Table 1 if the results of the analysis required in Subparagraphs (8) through (11) of this Paragraph indicate an exceedance of the regulatory level provided in 40 CFR 261.24 Table 1; or during a permitting action, a facility inspection, or when a complaint is received if it is necessary to determine compliance with the rules of this Subchapter. The requirements of this Paragraph shall not prevent a municipal solid waste landfill that is accepting incinerator ash from a treatment facility from requiring that additional ash samples be taken and analyzed to determine compliance with the rules of this Subchapter before the ash is accepted for disposal.
- (e) Chemical treatment requirements:
- (1) Microbiological waste shall be treated with 10 percent chlorine solution for no less than one hour.
- (2) Testing of treatment under conditions of full loading to confirm compliance with Subparagraph (a)(9) of this Rule shall be performed no less than once per week using a biological indicator of *Bacillus atrophaeus* spores having a population of not less than 1.0×10^6 .
- (3) A record of each test performed shall be maintained and shall include the type of indicator used, the test date, the start and end times, and the test results.
- (f) Microwave treatment requirements:
- (1) Microwave energy of appropriate output frequency shall be provided at a temperature of not less than 203 degrees Fahrenheit (95 degrees Celsius) for no less than 30 minutes each cycle.
- (2) The microwave treatment system shall be provided with a monitoring device that records time and temperature of each cycle. A record of the monitoring of the time and temperature of each cycle shall be maintained.
- (3) Testing of treatment under conditions of full loading to confirm compliance with Subparagraph (a)(9) of this Rule shall be performed no less than once per week using a biological indicator of *Bacillus atrophaeus* spores having a population of not less than 1.0×10^6 and in accordance with the equipment manufacturer's instructions.

- (4) A record of each test performed shall be maintained and shall include the type of indicator used, the test date, the start and end times, and the test result.

(g) Ozonation treatment requirements:

- (1) Testing of treatment under conditions of full loading to confirm compliance with Subparagraph (a)(9) of this Rule shall be performed no less than once per week using a biological indicator of *Bacillus atrophaeus* spores having a population of not less than 1.0×10^6 and in accordance with the equipment manufacturer's instructions.
- (2) Once every six months samples collected under conditions of full loading shall be submitted to an independent laboratory to confirm compliance with Subparagraph (a)(9) of this Rule.
- (3) A record of each test performed shall be maintained and shall include the type of indicator used, the test date, the ozonation time, the incubation time, and the test result.

(h) Alternative treatment methods.

- (1) A treatment facility owner or operator may request to use a method of, or procedures for, regulated medical waste treatment not listed or described in this Rule by submitting a request to the Division for approval. The request shall include documentation that describes the alternative treatment method, explains the procedures and provides analysis results to demonstrate that the treatment method will render the regulated medical waste noninfectious, and describes how the treatment method meets the requirements of the rules of this Section.
- (2) A request for an alternate method of chemical treatment shall also describe the chemical used to treat the specific microbiological agent(s) of concern for the regulated medical waste type, and shall consider factors such as temperature, contact time, pH, concentration, and the presence and state of dispersion, penetrability, and reactivity of organic material at the site of application.
- (3) The Division may approve the alternative treatment method by issuing the permit or an approval letter if the alternative treatment method renders the regulated medical waste noninfectious, and the alternative treatment method is compliant with the rules of this Section and protective of human health and the environment.

Authority G.S. 130A-309.26.

15A NCAC 13B .1205 REQUIREMENTS FOR TRANSPORTERS OF REGULATED MEDICAL WASTE
15A NCAC 13B .1206 REQUIREMENTS FOR STORAGE OF REGULATED MEDICAL WASTE
15A NCAC 13B .1207 OPERATIONAL REQ/REGULATED MEDICAL WASTE TREATMENT FACILITIES

Authority G.S. 130A-309.26.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 13B .1410 and readopt with substantive changes the rules cited as 15A NCAC 13B .1401-.1409.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: *November 1, 2019*

Public Hearing:

Date: *July 16, 2019*

Time: *6:00 p.m.*

Location: *NCDEQ Green Square Building, 217 West Jones Street, Raleigh, NC 27603, Room 1210*

Reason for Proposed Action: *Rules 15A NCAC 13B .1401-.1409 Solid Waste Compost Facilities are proposed for readoption to comply with the Rule Review requirements pursuant to G.S. 150B-21.3A. Proposed amendments to these rules include changes to requirements based on stakeholder input to the permit period, criteria for designation of small and large facilities, permitting exemptions, permit applications, and demonstration approvals; and the addition of requirements based on stakeholder input for odor control and corrective action, compost training, and vermicomposting and anaerobic digestion. Proposed amendments also include technical corrections and updates to general information, clarification of vague or unclear language, removal of redundant or unnecessary language. Rule .1410 is proposed for adoption by the agency to address a need for compost facility closure requirements.*

Comments may be submitted to: *Jessica Montie, NC DEQ Division of Waste Management, Attn: Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8247; email jessica.montie@ncdenr.gov*

Comment period ends: *August 16, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)*

from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ Approved by OSBM
- ☐ No fiscal note required

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1400 - SOLID WASTE COMPOST FACILITIES

15A NCAC 13B .1401 REQUIREMENT FOR PERMIT

(a) ~~All persons whose purpose is or includes the production of compost from solid waste or solid waste co-composted with other wastes shall not construct, operate, expand or modify a facility until a currently valid permit for a solid waste compost facility is issued by the Division. No person shall construct, operate, expand, or modify a facility that produces compost from solid waste or solid waste co-composted with other wastes unless it has been issued a currently valid permit for a solid waste compost facility by the Division, except as provided for in Rule .1402(f) and (g) of this Section. This provision also applies to facilities that accept, store, or produce compost or mulch from yard waste or from residues from agricultural products and processing.~~ General Provisions, Siting, provisions, siting, design, application, operational, distribution, and reporting requirements shall be in accordance with Rules .1402, .1403, .1404, .1405, .1406, .1407, and .1402 through .1408 of this Section.

(b) Plans for a Large Type 3 or Type 4 Solid Waste Compost Facility Permit, or a permit for any facility located over a closed-out disposal ~~area~~ area, shall be submitted with the permit application in accordance with Rule ~~.0201(a)(3)~~ .0202(a)(3) of this Subchapter. ~~A minimum of four sets of plans shall be submitted within each application.~~

(c) Compost permits shall be issued for a period of not more than 10 years. An application for renewal of a permit shall be submitted no less than four months prior to expiration of the existing permit.

(d) Permit modifications.

- (1) A major modification shall be required for any of the following: a change in either property or facility operator or ownership, a change in facility type as defined in Rule .1402 of this Section, an expansion or relocation of the approved operations area, or a substantial change to the operations or design plan. A major modification requires an application

submitted to the Division in accordance with Rule .1405 of this Section, including revised design and operational plans and drawings.

- (2) A minor modification shall include a change in the design or operational plan that does not require a substantial change to the design and operations plan and drawings. A minor modification that is approved by the Division shall be approved by written notification. The approval shall be added as an addendum to the approved plan.

- (3) An approved major modification shall result in the issuance of a new permit with an expiration no more than 10 years from the time of issuance in accordance with Paragraph (c) of this Rule if the modification application meets the criteria for a permit renewal.

(e) For purposes of this Section, "operations area" means the total area used for mixing, grinding, processing, composting, curing, and wood waste and feedstock unloading and storage. Operations area shall not include buffer areas.

(f) For purposes of the Section, "material onsite" means wood wastes, feedstocks, mixtures, and active and curing compost, but shall not include finished product.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1402 GENERAL PROVISIONS FOR SOLID WASTE COMPOST FACILITIES

(a) Applicability. The provisions of this Rule shall apply to the following facilities:

- (1) facilities that produce compost or mulch from yard waste or from residues from agricultural products and processing;
- (2) vermicomposting facilities;
- (3) anaerobic digestion facilities; and
- (4) compost facilities that compost solid waste or co-compost solid waste with sludges that are not classified as a solid ~~waste~~ waste, functioning as a nutrient source.

(b) Facilities that co-compost with sewage sludge shall comply with all applicable ~~Federal~~ federal regulations regarding sludge management ~~at in~~ in 40 CFR 501 and 503. 40 CFR 503, subpart B is ~~hereby~~ incorporated by reference, including subsequent amendments or additions, and editions. Copies of the Code of Federal Regulations may be obtained from the U.S. Government Publishing Office website at www.gpo.gov Solid Waste Section at 401 Oberlin Road, Suite 150, Raleigh, NC 27605 at no cost.

~~(c)(b)~~ The provisions of this Section ~~do~~ shall not apply to compost facilities that compost only wastewater treatment sludge with ~~municipal~~ solid waste functioning only as a bulking agent.

~~(e) Solid Waste Compost Facilities that have been permitted prior to the effective date of this Rule shall meet the requirements of this Section within one year of the effective date of this Rule, or, within two years if more than one hundred thousand dollars (\$100,000) of capital investment is necessary to comply with changes.~~

(d) Solid waste compost produced outside the State of North Carolina and imported into the state shall comply with the requirements specified in Rule .1407 of this Section.

~~(e) Compost that is disposed shall not count toward waste reduction goals.~~

~~(e)(f)~~ Solid waste compost facilities shall be classified based on the types and amounts of materials to be composted.

- (1) Type 1 facilities may receive yard and garden waste, silvicultural waste, and untreated and unpainted wood ~~waste waste, or any combination thereof.~~
- (2) Type 2 facilities may receive pre-consumer meat-free food processing waste, vegetative agricultural waste, source separated ~~paper paper, or and~~ other source separated specialty ~~wastes, which wastes that~~ are low in pathogens and physical contaminants. Waste acceptable for a Type 1 facility may be composted at a Type 2 facility.
- (3) Type 3 facilities may receive manures and other agricultural waste, meat, ~~post-consumer source separated post-consumer source-separated~~ food ~~wastes wastes, and other source-separated~~ ~~specialty source-separated specialty~~ wastes ~~or any combination thereof~~ that are ~~relatively~~ low in physical ~~contaminants, contaminants~~ but may have high levels of pathogens. Waste acceptable for a Type 1 or 2 facility may be composted at a Type 3 facility.
- (4) Type 4 facilities may receive ~~mixed municipal solid waste, post collection separated or processed waste,~~ industrial solid waste, ~~non solid non-solid~~ waste sludges functioning as a nutrient source or other similar compostable organic ~~wastes wastes,~~ or any combination thereof. Waste acceptable for a Type 1, ~~2, 2,~~ or 3 facility may be composted at a Type 4 facility.
- (5) The listed waste types in Subparagraph ~~(f)(2)(2)~~ of this ~~Rule Paragraph~~ shall be considered to be low in pathogens and physical contaminants if handled so as to prevent development of contaminants or exposure to physical contamination. The listed waste types in Subparagraph ~~(f)(3)(3)~~ of this ~~Rule Paragraph~~ are likely to have high pathogens and low physical contamination. In determining whether a specific waste stream ~~shall be is~~ acceptable for composting in a Type 2 or Type 3 facility, the Division shall consider the method of handling the waste prior to delivery to the facility as well as the physical characteristics of the waste. Testing for pathogens and physical contaminants ~~may shall~~ be required ~~where if~~ a determination cannot be made based upon prior knowledge of the waste. Test methods ~~and constituents tested shall be in accord~~ comply with Rule .1407(b)(2), (b)(3), and (b)(5) of this Section. Appendices A and B to Table 3.

(6) Small facilities.

(A) Small Type 1 facilities shall have an operations area less than two acres in size and shall be limited to no more than 6,000 cubic yards material onsite at any given time, including finished product.

(B) Small Type 2, 3, and 4 facilities shall have an operations area less than two acres in size and shall be limited to no more than 1,000 cubic yards material onsite at any given time.

~~Small facilities are those that receive less than 1000 cubic yards of material for composting per quarter, and occupy less than two acres of land, except that a Small Type 1 facility shall process or store less than 6,000 cubic yards of material per quarter.~~

(7) Large facilities.

(A) Large Type 1 facilities shall have an operations area of two or more acres in size or have more than 6,000 cubic yards material onsite at any given time.

(B) Large Type 2, 3, and 4 facilities shall have an operations area of two or more acres in size or have more than 1,000 cubic yards material onsite at any given time.

~~Large facilities are those that receive 1000 cubic yards or more of material for composting per quarter or occupy two acres or more of land, except that a Large Type 1 facility shall process or store more than 6,000 cubic yards of material per quarter.~~

~~(f)(g) A permit is not required for the following operations: The following operations shall be exempt from the requirements of this Section:~~

- ~~(1) Backyard Composting, backyard composting;~~
- ~~(2) Farming farming operations and silvicultural operations where if the compost is produced from materials grown on the owner's land and re-used on the owner's land or in his associated farming operations and not offered to the public, public and;~~
- ~~(3) persons receiving no more than 30 cubic yards of leaves from an offsite source on an annual basis.~~
- ~~(3) Small Type 1 Facilities meeting the following conditions:~~
 - ~~(A) Notification of the Solid Waste Section prior to operation and on an annual basis as to:~~
 - ~~(i) Facility location;~~
 - ~~(ii) Name, address and phone number of owner and operator;~~

- (iii) ~~Type and amount of wastes received;~~
- (iv) ~~Composting process to be used; and~~
- (v) ~~Intended distribution of the finished product.~~
- (B) ~~Agreement to operate in accordance with operational requirements as set forth in Rule and the setbacks in Rule .1404(a)(1) – (9) of this Section.~~
- (C) ~~Facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders.~~
- (D) ~~Facility is not located over closed-out disposal site.~~
- (E) ~~Safety measures are taken to prevent fires and access to fire equipment or fire fighting services is provided.~~

(g) The following operations shall be exempt from the permitting requirements in Rule .1405 of this Section:

- (1) Small Type I Facilities meeting the following conditions:
 - (A) notification of the Division prior to operation and on an annual basis as to:
 - (i) the facility location;
 - (ii) the name(s) and contact information of the owner and operator;
 - (iii) type and amount of wastes received;
 - (iv) the composting process to be used;
 - (v) the intended distribution of the finished product; and
 - (vi) for new facilities only, a letter from the unit of government having zoning jurisdiction over the site that states that the proposed use is allowed within the existing zoning, if any, and that any necessary zoning approval or permit has been obtained;
 - (B) the facility operates in accordance with the operational requirements as set forth in Rule .1406(1) through (11) and (16) of this Section and the setbacks in Rule .1404(a)(1) through (a)(10) of this Section;
 - (C) the facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders;
 - (D) the facility shall not be located over a closed-out disposal site; and
 - (E) the safety measures shall be taken to prevent fires and access to fire

equipment or fire-fighting services shall be provided.

(2) Compost facilities meeting the following conditions:

- (A) the site may receive for composting pre- and post-consumer food waste, manure, vegetative agricultural waste, yard and garden waste, land-clearing debris, untreated and unpainted wood waste, and source separated paper; material onsite, not including finished compost, shall not exceed 100 cubic yards at any time;
- (B) the operations area shall be less than 1.0 acres total;
- (D) the site operates in accordance with operational requirements as set forth in Rule .1406 of this Section and the setbacks in Rule .1404(a)(1) through (a)(10) of this Section, except that the buffer between property line and operations area shall be at least 50 feet and the buffer between the operations area and residences or dwellings not owned and occupied by the operator shall be at least 200 feet;
- (E) the site operates in such a manner that dust and odors do not constitute a public nuisance;
- (F) for facilities producing compost that is distributed to the public or used in public areas, compost produced from the facility shall meet the pathogen testing and record keeping requirements per Rule .1407(b) and Rule .1408(a) of this Section; and
- (G) the site operates in accordance with all applicable State or local laws, ordinances, rules, regulations, or orders.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1403 GENERAL PROHIBITIONS FOR SOLID WASTE COMPOST FACILITIES

- (a) Neither hazardous waste nor ~~asbestos-containing~~ asbestos-containing waste shall be accepted at a facility or processed into compost.
- (b) Household hazardous waste shall not be accepted by a facility, except in an area designated by facility site plans for storage, and shall not be processed into compost.
- (c) ~~Any compost~~ Compost made from solid waste ~~which that~~ cannot be used pursuant to the requirements of this Rule shall be reprocessed or disposed of pursuant to the requirements of 15A NCAC 13B.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

**15A NCAC 13B .1404 SITING/DESIGN
REQUIREMENTS FOR SOLID WASTE COMPOST
FACILITIES**

(a) A site shall meet the ~~following~~ requirements of this Rule at the time of initial permitting and shall continue to meet these requirements throughout the life of the permit only on the site property owned or controlled by the applicant or by the landowner(s) at the time of ~~permitting~~; permitting.

- (1) A site located in a floodplain shall not restrict the flow of the 100-year ~~flood~~; flood, reduce the temporary storage capacity of the ~~floodplain~~; floodplain, or result in washout of solid ~~waste~~ waste, so as to pose a hazard to human life, wildlife, ~~land~~ land, or water ~~resources~~; resources.
- (2) A 100-foot ~~minimum~~ buffer ~~is~~ shall be maintained ~~required~~ between all property lines and compost areas for Type 3 and 4 facilities, 50-foot for Type 1 or 2 ~~facilities~~; facilities.
- (3) A 500-foot ~~minimum~~ buffer ~~is~~ shall be maintained ~~required~~ between compost areas and residences or dwellings not owned and occupied by the permittee, except that Type 1 and Small Type 2 and 3 facilities shall ~~have maintain~~ a 200-foot ~~minimum buffer~~; buffer.
- (4) A 100-foot ~~minimum~~ buffer ~~is~~ shall be maintained ~~required~~ between all wells and compost areas, except monitoring ~~wells~~; wells.
- (5) A 50-foot ~~minimum~~ buffer ~~is~~ shall be maintained ~~required~~ between perennial ~~streams/rivers~~ streams and rivers and compost ~~areas~~; areas.
- (6) A compost facility shall be located in accordance with 15A NCAC 2B .0200, Classification and Water Quality Standards Applicable to Surface Waters in North ~~Carolina~~; Carolina.
- (7) All portions of ~~any~~ a compost facility located over a closed-out disposal area shall be designed with a pad adequate to protect the disposal area cap from being disturbed, as defined in Part (a)(10)(E) of this Rule, and there shall be no runoff from the pad onto the cap or side slopes of the closed out ~~area~~; area.
- (8) A 25-foot minimum distance ~~is~~ shall be maintained ~~required~~ between compost areas and swales or ~~berms~~; berms to allow for adequate access of fire fighting equipment;
- (9) A site shall meet the following surface water requirements:
 - (A) ~~A~~ a site shall not cause a discharge of materials or fill materials into waters or wetlands of the state that is in violation of Section 404 of the Clean Water Act;
 - (B) ~~A~~ a site shall not cause a discharge of pollutants into waters of the state that is in violation of the requirements of the National Pollutant Discharge

Elimination System (NPDES), ~~under~~ pursuant to Section 402 of the Clean Water Act; and

- (C) ~~A~~ a site shall not cause non-point source pollution of waters of the state that violates assigned water quality ~~standards~~; standards.
- (10) A site shall meet the following groundwater and operations area pad requirements:
 - (A) ~~A~~ a site shall not contravene groundwater standards as established ~~under~~ pursuant to 15A NCAC ~~02L~~; 2L;
 - (B) the operations area of Type 1, 2, and 3 facilities shall have one of the following:
 - (i) a soil pad with a soil texture finer than loamy sand. For a Type 1 or 2 facility, the depth to the seasonal high water table shall be maintained at least 12 inches. For a Type 3 facility, the depth to the seasonal high water table shall be maintained at least 24 inches; or
 - (ii) a pad in accordance with Part (C) of this Subparagraph; Portions of a site used for waste receipt and storage, active composting, and curing shall have a soil texture finer than loamy sand and the depth to the seasonal high water table shall be maintained at least 12 inches for a Type 1 or 2 facility and 24 inches for a Type 3 facility, unless a pad is provided;
 - (C) the operations area of a Type 4 facility shall have a pad with a linear coefficient of permeability no greater than 1×10^{-7} cm/sec. The pad shall consist of one of the following:
 - (i) a non-soil pad, such as concrete and asphalt, designed and constructed to meet the weight requirements of the compost operation and to prevent infiltration of liquids to groundwater; or
 - (ii) a soil pad of at least 18 inches constructed in accordance with Rule .1624(a)(8) and Rule .1621 of this Subchapter. A 12-inch soil layer shall be maintained

over the pad to protect it from damage and desiccation; and
~~A pad shall be provided for portions of a Type 4 facility used for waste receiving and storage, active composting, and curing;~~

(D) ~~A pad is not required for storage of finished product that is dried so as to pass the Paint Filter Liquids Test (EPA Method 9095), and for which the storage area is prepared in such a manner that water does not collect around the base of the stored material, and finished product shall be stored where the depth to the seasonal high water table is maintained at least 12 inches below ground surface. inches; and~~

(E) ~~The linear coefficient of permeability of pads required in accordance with this Rule shall not be greater than 1 x 10(7) centimeters per second. If natural soils are used, the liner must be at least 18 inches thick.~~

~~(b) For Subparagraphs (a)(2) through (a)(4) and Part (a)(10)(B) of this Rule, (dependent upon waste type, facility design, and regional topography) alternative minimum buffers or requirements may be increased if deemed necessary by the Division in order to protect public health and the environment or to prevent the creation of a nuisance.~~

~~(b) For Subparagraphs (a)(2) through (a)(4) and Part (a)(10)(B) of this Rule, alternative minimum buffers or requirements may be increased, based on the waste type, facility design, and regional topography, if necessary to protect public health and the environment or to prevent the creation of a nuisance.~~

(c) A site shall meet the following design requirements:

- (1) ~~A~~ a site shall not allow uncontrolled public access;
- (2) ~~A~~ a site shall meet the requirements of ~~the~~ Sedimentation ~~Pollution~~ Control Law (15A NCAC 04; 4);
- (3) ~~A~~ a site shall meet the requirements of the Air Pollution Control Requirements (15A NCAC ~~2D~~ 02D) to minimize fugitive emissions and odors; and
- (4) ~~A~~ a site shall be designed to minimize odors at the property boundary.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1405 APPLICATION REQUIREMENTS FOR SOLID WASTE COMPOST FACILITIES

~~(a) One paper copy and one electronic copy of a solid waste compost facility permit application shall be submitted to the Division. The following information is shall be required for an application for a permit to construct and operate a proposed Type 1, or a Small Type 2 or 3 solid waste compost facility; Large Type~~

1, Small or Large Type 2 or 3 or all Type 4 solid waste compost facilities unless the permitting requirements are exempted by Paragraph (g) of Rule .1402 Rule .1402(g) or (h) of this Section:

(1) the name and contact information of the facility owner and operator;

(2) documentation of property ownership, including:

(a) the property owners;

(b) a current property deed; and

(c) a notarized acknowledgement letter from the landowner of use of the property as a solid waste facility if landowner is not the facility owner or operator.

(3)(4) ~~An~~ an aerial photograph or scaled drawing, ~~where one inch is at a scale of one inch to less than or equal to 400 feet, accurately showing the area within one-fourth mile of the proposed site's boundaries with the following specifically identified:~~

(a)(A) ~~Entire~~ the entire property owned or leased by the person proposing the facility;

(b)(B) ~~Location~~ the location of all homes, wells, industrial buildings, public or private utilities; ~~roads; watercourses; dry runs; utilities, roads, watercourses,~~ and other applicable information regarding the ~~general~~ topography within 500 feet of the proposed facility; and

(c)(C) ~~Land~~ the land use zoning of the proposed site.

(4)(2) ~~A~~ for all new sites, a letter from the unit of government having zoning jurisdiction over the site ~~which that~~ states that the proposed use is allowed within the existing zoning, if any, and that ~~any~~ necessary zoning ~~approval or permit has been obtained. approvals or permits have been obtained;~~

(5)(3) ~~An~~ an explanation of how the site complies with siting and design standards ~~is required by Rule .1404 of this Section. Section;~~

(6)(4) ~~A~~ a detailed report indicating the following:

(a)(A) ~~Waste type(s), the waste types, the source and estimated quantity of the solid waste to be composted, composted~~ including the source and expected quantity of any bulking agent or amendment (if applicable), ~~any~~ expected ~~recycle~~ recycling of bulking agent or compost, and ~~any~~ seasonal variations in the solid waste type or quantity; and

(b)(B) ~~For~~ for facilities that ~~utilize~~ use natural soils as a pad, a soil evaluation of the site conducted by a licensed soil scientist down to a depth of four ~~feet,~~ feet or to bedrock or evidence of a

- seasonal high water table, ~~to evaluate~~
~~evaluating~~ all ~~chemical~~ and physical
soil properties and depth of the
seasonal high water table; ~~table;~~
- (7)(5) ~~Site~~ a site plan at a scale ~~where~~ of one inch is to
less than or equal to 100 feet ~~to the inch~~ that
delineates the following:
- (a)(A) ~~Existing~~ the existing and proposed
contours, at intervals appropriate to
the topography;
- (b)(B) ~~Location~~ the location and elevations of
dikes, trenches, and other water
control devices and structures for the
diversion and controlled removal of
surface water;
- (c)(C) ~~Designated~~ the designated setbacks
and property lines;
- (d)(D) ~~Proposed~~ the proposed utilities and
structures; ~~and~~
- (e)(E) ~~Areas~~ the areas for unloading,
processing, active composting, curing,
and storing of ~~material~~; ~~material;~~
- (f) ~~the access roads and details on traffic~~
~~patterns;~~
- (g) ~~the wetlands, streams, and 100-year~~
~~floodplains; and~~
- (h) ~~the proposed surface and groundwater~~
~~monitoring locations, if required.~~
- (8)(6) A description of the operation of the facility,
~~which must include at a minimum: an~~
~~operations plan that includes the following:~~
- (a)(A) ~~Name, address and phone number~~ the
name and contact information for the
person responsible for the operation of
the facility;
- (b)(B) ~~List~~ a list of personnel ~~required~~ and the
responsibilities of each position;
- (c)(C) ~~Operation plan for the facility; a~~
~~schedule for operations, including~~
~~days and hours that the facility will be~~
~~open, preparations before opening,~~
~~and procedures to be followed after~~
~~closing for the day;~~
- (d)(D) ~~Special~~ special precautions or
procedures for operating during wind,
heavy rain, snow, freezing or other
adverse conditions;
- (e)(E) A description of actions to be taken
to minimize noise, vectors, ~~and~~ air
borne ~~particulates~~; ~~particulates;~~ ~~and~~
~~odors; and~~
- (f)(F) A description of the ultimate use for
the finished compost, ~~the~~ method for
removal from the site, and a
contingency plan for disposal or
alternative ~~usage~~ use of residues or
finished compost that cannot be used
in the expected manner due to poor
- quality or change in market
~~conditions~~; ~~conditions;~~
- (g) ~~contingency plan describing actions to~~
~~be taken for equipment breakdown,~~
~~unauthorized waste arriving at the~~
~~facility, spills, and fires;~~
- (h) ~~a discussion of compliance with the~~
~~operational requirements listed in~~
~~Rule .1406 of this Section; and~~
- (i) ~~for Large Type 2 and Type 3 and all~~
~~Type 4 facilities, include the~~
~~following:~~
- (i) ~~a description of procedures~~
~~for incoming material~~
~~inspections;~~
- (ii) ~~a description of procedures to~~
~~meet the final product~~
~~sampling and analyses~~
~~requirements specified in in~~
~~Rule .1407 of this Section;~~
- (iii) ~~a description of procedures to~~
~~meet the record keeping~~
~~requirements specified in~~
~~Rule .1408 of this Section;~~
~~and~~
- (iv) ~~a copy of all applicable local,~~
~~state, and federal permits and~~
~~approvals necessary for the~~
~~operation of the facility.~~
- (9)(7) A report on the design of the facility,
including:
- (a)(A) ~~Design~~ the design capacity of the
facility;
- (b)(B) A process flow diagram of the entire
facility, including the type, size, and
location of all major ~~equipment,~~
equipment and feedstock flow
streams. The flow streams shall
indicate the quantity of materials ~~by~~ ~~on~~
~~a wet weight and volume; volumetric~~
~~basis;~~
- (c) a description and sizing of the storage
facilities for feedstocks, amendments,
and finished compost;
- (d)(C) ~~The~~ the means for measuring,
shredding, mixing, and proportioning
input materials;
- (e)(D) ~~Anticipated~~ the anticipated process
duration, including receiving,
preparation, composting, curing, and
distribution;
- (f)(E) A description of the location of all
temperature, ~~air~~ air, and any other type
of monitoring ~~points~~; ~~points~~ and the
frequency of monitoring;
- (g)(F) A description of how the temperature
control and monitoring equipment will
demonstrate that the facility meets the
requirements in Rule .1406(11), (12),

- or (13) ~~.1406~~ Items (10), (11), or (12) of this Section, as appropriate for the feedstock;
- (h)(G) ~~The~~ the method of aeration provided and the capacity of aeration equipment; ~~and~~
- (i)(H) ~~A~~ a description of the method to control surface water run-on and ~~run-off~~; run-off and the method to control, collect, treat, and dispose of leachate ~~generated~~; generated;
- (j) the separation, processing, storage, and ultimate disposal of non-compostable materials, if applicable;
- (k) a description of dust control and other air emission control measures; and
- (l) a description of recycling or other material handling processes used at the facility.
- (10) Odor Control Plan. Operators of Large Type 2, Large Type 3, and all Type 4 facilities shall prepare, submit to the Division, and implement an odor control plan that details site specific conditions to meet the design requirement in Rule .1404(c)(4) of this Section. Existing facilities permitted prior to the readopted effective date of this Rule shall meet these requirements at the time of permit renewal. The plan shall contain the following:
- (a) an identification of all onsite potential odor sources;
- (b) a description of onsite weather conditions that would affect odor migration, such as prevailing wind direction, topography, and seasonal variations;
- (c) plan to monitor onsite odor and record odor data for the odor sources with the potential to migrate offsite. Data shall include date, time, site specific conditions, weather conditions, and characteristics and intensity of odor;
- (d) a description of the facility's odor complaint protocol, including forms used, odor verification by operator both onsite and offsite, what the response will be, and who will be contacted;
- (e) a description of complaint record keeping; and
- (f) a description of odor control design and operating best management practices to be used onsite, including:
- (i) personnel training;
- (ii) feedstock characteristics;
- (iii) the initial mixing of feedstocks to reach targeted carbon to nitrogen (C:N) ratios, moisture levels;
- (iv) maintenance of compost piles for moisture;
- (v) aeration methods, frequency, and protocol;
- (vi) leachate and liquids management;
- (vii) weather monitoring and protocol;
- (viii) management of airborne emissions; and
- (ix) windrow covering.
- (8) ~~A description of the label or other information source that meets the requirements of Rule .1407(k) of this Section.~~
- (11)(9) ~~Plans~~ engineering plans and specifications for the facility, including manufacturer's performance data for all equipment ~~selected~~; selected; and
- (12) a description of procedures for permanent closure of the facility, in accordance with Rule .1410 of this Section, should the facility close.
- (10) ~~A detailed operation and maintenance manual outlining:~~
- (A) ~~A quality assurance plan for the process and final product which lists the procedures used in inspecting incoming material; monitoring, sampling and analyzing the compost process and final product, testing schedule, and recordkeeping requirements;~~
- (B) ~~Contingency plans detailing corrective or remedial action to be taken in the event of equipment breakdown; non-conforming waste delivered to the facility; spills, and undesirable conditions such as fires, vectors and odors; and~~
- (C) ~~An explanation of how the facility will comply with operational requirements as outlined in Rule .1406 of this Section, detailed operational information and instruction, an outline of reports to be submitted in compliance with this Section, and safety instructions.~~
- (11) ~~As built drawings where applicable.~~
- (b) ~~The following information is required for an application for a permit to construct a proposed Large 2 or 3 or a Type 4 solid waste compost facility:~~
- (1) ~~An aerial photograph or scaled drawing, where one inch is less than or equal to 400 feet, accurately showing the area within one fourth of the mile of the proposed site's boundaries with the following specifically identified:~~
- (A) ~~Entire property owned or leased by the person proposing the site;~~

- (B) ~~Location of all homes, wells, industrial buildings, public or private utilities and roads, watercourses, dry runs, and other applicable information regarding the general topography within one fourth mile; and~~
- (C) ~~Land use and zoning of the proposed site.~~
- (2) ~~A letter from the unit of government having zoning jurisdiction over the site which states that the proposed use is allowed within the existing zoning, if any, and that any necessary zoning approval or permit has been obtained.~~
- (3) ~~An explanation of how the site complies with siting and design standards in Rule .1404 of this Section.~~
- (4) ~~A detailed report indicating the following:~~
 - (A) ~~Waste type(s), source and quantity of the solid waste to be composted, including the source and expected quantity of any bulking agent or amendment (if applicable), any expected recycle of bulking agent or compost, and any seasonal variations in the solid waste type or quantity;~~
 - (B) ~~For facilities which utilize natural soils as a pad, a soil evaluation of the site conducted by a soil scientist down to a depth of four feet or to bedrock or evidence of a seasonal high water table, to evaluate all chemical and physical soil properties and depth of the seasonal high water table.~~
- (5) ~~Site plans at a scale where one inch is less than or equal to 100 feet to the inch that delineates the following:~~
 - (A) ~~Existing and proposed contours, at intervals appropriate to the topography;~~
 - (B) ~~Location and elevations of dikes, trenches, and other water control devices and structures for the diversion and controlled removal of surface water;~~
 - (C) ~~Designated setbacks, buffer zones and property lines;~~
 - (D) ~~Proposed utilities and structures;~~
 - (E) ~~Access roads, details on traffic patterns;~~
 - (F) ~~Areas for unloading, processing, active composting, curing, and storage of material;~~
 - (G) ~~Areas for unloading, processing, and storing recyclables, household hazardous waste, and other materials, where applicable;~~
 - (H) ~~Proposed surface and groundwater monitoring locations;~~
 - (I) ~~Flood plains and wetlands; and~~
- (J) ~~Benchmarks.~~
- (6) ~~A description of the operation of the facility, which must include at a minimum:~~
 - (A) ~~Name, address and phone number for the person responsible for the operation of the facility;~~
 - (B) ~~Operation plan for the facility;~~
 - (C) ~~List of personnel required and the responsibilities of each position;~~
 - (D) ~~A schedule for operation, including days and hours that the facility will be open, preparations before opening, and procedures to be followed after closing for the day;~~
 - (E) ~~For mixed waste processing facilities, plan for removing and disposal of household hazardous waste from the waste stream;~~
 - (F) ~~Special precautions or procedures for operating during wind, heavy rain, snow, freezing or other adverse conditions;~~
 - (G) ~~A description of actions to be taken to minimize noise, vectors, air borne particulates, and odors; and~~
 - (H) ~~A description of the ultimate use for the finished compost, method for removal from the site, and a contingency plan for disposal or alternative usage of residues or finished compost that cannot be used in the expected manner due to poor quality or change in market conditions.~~
- (7) ~~A report on the design of the facility, including:~~
 - (A) ~~Design capacity of the facility;~~
 - (B) ~~A process flow diagram of the entire facility, including the type, size, and location of all major equipment, and feed stock flow streams. The flow streams shall indicate the quantity of material on a wet weight and volumetric basis;~~
 - (C) ~~A description and sizing of the storage facilities for amendment, bulking agent, solid waste, recyclables, household hazardous waste and finished compost;~~
 - (D) ~~The means for measuring, shredding, mixing, and proportioning input materials;~~
 - (E) ~~Anticipated process duration, including receiving, preparation, composting, curing, and distribution;~~
 - (F) ~~The separation, processing, storage, and ultimate disposal of non compostable materials, if applicable;~~

- (G) ~~A description of the location of all temperature, air and any other type of monitoring points, and the frequency of monitoring;~~
- (H) ~~A description of how the temperature control and monitoring equipment will demonstrate that the facility meets the requirements in Rule .1406 Items (10), (11), or (12) of this Section, as appropriate for the feedstock;~~
- (I) ~~The method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;~~
- (J) ~~A description of the air emission and control technologies;~~
- (K) ~~A description of the method to control surface water run off; and the method to control, collect, treat, and dispose of leachate generated; and~~
- (L) ~~A description of any recycling or other material handling processes used at the facility.~~
- (8) ~~A description of the label or other information source that meets the requirements of Rule .1407(k) of this Section.~~
- (9) ~~Engineering plans and specifications for the facility, including manufacturer's performance data for all equipment selected.~~
- (e) ~~The following information is required for reviewing an application for a permit to operate a Type 4 or Large Type 2 or 3 solid waste composting facility:~~
 - (1) ~~Contingency plans detailing corrective or remedial action to be taken in the event of equipment breakdown; air pollution; non-conforming waste delivered to the facility; spills, and undesirable conditions such as fires, particulates, noise, vectors, odors, and unusual traffic conditions;~~
 - (2) ~~A detailed operation and maintenance manual. The manual must contain general design information, a discussion of compliance with operational requirements as outlined in Rule .1406 of this Section, detailed operational information and instruction, equipment maintenance, list of personnel, required personnel training, outline of reports to be submitted in compliance with this Section, and safety instructions;~~
 - (3) ~~A quality assurance plan for the process and final product which lists the procedures used in inspecting incoming materials; monitoring, sampling and analyzing the compost process and final product, testing schedule, and record keeping requirements;~~
 - (4) ~~A fact sheet and process flow diagram that summarizes actual equipment sizing, aeration capacity, detention times, storage capacity, and~~

- ~~flow rates (wet weight and volumetric) for the system and equipment chosen;~~
- (5) ~~As built drawings;~~
- (6) ~~A copy of all applicable local, state, and Federal permits and approvals necessary for the proper operation of the facility; and~~
- (7) ~~Product marketing and distribution plan.~~
- (d) ~~An application for a permit modification shall be required for changes in facility ownership, an increase in facility capacity, or the addition of new feedstock materials.~~

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1406 OPERATIONAL REQUIREMENTS FOR SOLID WASTE COMPOST FACILITIES

Any ~~A~~ person who maintains or operates a solid waste compost facility shall maintain and operate the site to conform with the following practices: practices and operational requirements of this Rule.

- (1) ~~Plan and Permit Requirements:~~ Requirements.
 - (a)(A) ~~Approved Construction~~ plans and conditions of the permit shall be followed. ~~followed;~~ and
 - (b)(B) A copy of the permit, plans, and operational reports shall be maintained on site at all times.
- (2) ~~Adequate erosion~~ Erosion control measures shall be practiced to prevent on-site erosion and to control the movement of silt or contaminants from the site.
- (3) ~~Stormwater Surface water~~ shall be diverted from the operations area. ~~operational, compost euring, and storage areas.~~
- (4) Leachate shall be contained on site and treated to meet the standards of the applicable off-site disposal method.
- (5) ~~Access and Security Requirements:~~ Requirements.
 - (a)(A) Large sites shall be secured by means of gates, chains, berms, fences, or other security measures demonstrated to provide equivalent protection and be approved by the Division. ~~to prevent unauthorized entry.~~
 - (b)(B) An operator shall be on duty at the site at all times while the facility is open for public use use, ~~to ensure compliance with operational requirements~~ and access to such facilities shall be controlled.
 - (c)(C) The access road to the site shall be of all-weather construction and maintained. ~~maintained in good condition.~~
- (6) A site shall only accept those solid wastes that it is permitted to receive.
- (7) ~~Safety Requirements:~~ Requirements.

- ~~(a)(A)~~ Open burning of solid waste ~~is shall~~ be prohibited.
- ~~(b)(B)~~ Equipment shall be provided to control accidental fires and arrangements made with the local fire protection agency to ~~immediately~~ provide fire-fighting services when needed.
- ~~(c)(C)~~ Personnel training shall be provided to ~~insure~~ ensure that all employees are trained in site specific safety, remedial, and corrective action procedures.
- (8) Reporting Fires. Fires shall be reported to the Division orally within 24 hours of the incident and in writing within 15 days of the incident.
- (9)(8) Sign Requirements: Requirements.
 - ~~(a)(A)~~ Signs providing information on waste that ~~can~~ may be received, dumping procedures, the hours during which the site is open for public use, the permit number and other pertinent information shall be posted at the site entrance.
 - ~~(b)(B)~~ Traffic ~~signs/markers~~ signs and markers shall be provided ~~as necessary to promote an orderly traffic pattern to~~ direct traffic to and from the discharge area and to maintain efficient operating conditions.
 - ~~(c)(C)~~ Signs shall be posted stating that no hazardous waste, asbestos containing waste, or medical waste ~~can~~ may be received at the site.
- (10)(9) Monitoring Requirements: Requirements.
 - ~~(a)(A)~~ ~~Specified monitoring and reporting requirements shall be met.~~ Temperature monitoring shall meet the record-keeping requirements in Rule .1408 of this Section.
 - ~~(b)(B)~~ The temperature of all compost produced shall be monitored sufficiently to ensure that the pathogen reduction criteria ~~is~~ are met. Onsite thermometers shall be calibrated annually and records of calibration shall be maintained.
- ~~(11)(10)~~ Compost process at Type 1 facilities shall be maintained at or above 55 degrees Celsius (131 degrees F) ~~3~~ for three days and aerated to maintain elevated temperatures.
- (12)(44) Vector Attraction Reduction (VAR). Types 2, 3 and 4 facilities shall maintain the compost process at a temperature above 40 degrees Celsius (104 degrees F) for 14 days or longer and the average temperature for that time shall be higher than 45 degrees Celsius (113 degrees F). ~~(113 degrees F) or, Types 2, 3 and 4 facilities shall meet the vector attraction~~ reduction requirements in 40 CFR 503.33(b)(4) or (7). Requirements of 40 CFR 503.33(b)(4) and (7) are hereby incorporated by reference, including any subsequent amendments or additions.
- ~~(13)(12)~~ Process to Further Reduce Pathogens (PFRP). The composting process shall qualify as a process to further reduce pathogens for all Type 3 and Type 4 facilities. The following ~~are~~ shall be acceptable methods:
 - ~~(a)(A)~~ ~~The the~~ windrow composting method, in which the following requirements apply: ~~Aerobic conditions shall be maintained during the compost process. A temperature of 131 degrees F (55 degrees Celsius) or greater shall be maintained in the windrow for at least 15 days. During the high temperature period, the windrow shall be turned at least five times.~~
 - (i) aerobic conditions shall be maintained during the composting process;
 - (ii) a temperature of 131 degrees F (55 degrees Celsius) or greater shall be maintained in the windrow for at least 15 days; and
 - (iii) during the high temperature period, the windrow shall be turned at least five times.
 - ~~(b)(B)~~ ~~The the~~ static aerated pile composting method, in which the following requirements apply: ~~Aerobic conditions shall be maintained during the compost process. The temperature of the compost pile shall be maintained at 131 degrees F (55 degrees Celsius) or greater for at least three days.~~
 - (i) aerobic conditions shall be maintained during the composting process; and
 - (ii) the temperature of the compost pile shall be maintained at 131 degrees F (55 degrees Celsius) or greater for at least three days.
 - ~~(c)(C)~~ ~~The the~~ within-vessel composting method, in which the temperature in the compost piles shall be maintained at a minimal temperature of 131 degrees F (55 degrees Celsius) for three days.
- ~~(14)(13)~~ Nitrogen bearing wastes shall be incorporated as necessary to minimize odor and the migration of nutrients. Putrescible feedstocks added to the compost process shall be incorporated in such a manner to control odor.

- (15) The finished compost shall meet the classification, testing, and distribution requirements in Rule .1407 of this Section.
- (16) The amount of compost stored at the facility shall not exceed the designed storage capacity.
- (17) The site shall be operated to minimize odors at the property boundary.
- (18) Odor Corrective Action.
- (a) If the Odor Control Plan prepared in accordance with Rule .1405(10) of this Section has been followed and offsite odors are not being minimized, the owner or operator shall submit for approval by the Division an Odor Corrective Action Report. The report shall contain the following:
- (i) a summary of the actions taken in the Odor Control Plan;
- (ii) an identification of onsite odor sources, in order of severity;
- (iii) an evaluation and identification of odorous feedstocks as they relate to odor complaints;
- (iv) an evaluation of current operation process indicators including carbon to nitrogen (C:N) ratio, pH, moisture content, oxygen levels, temperature, porosity, and particle size;
- (v) an evaluation of the compost recipe calculation with C:N ratio testing that is performed by an independent laboratory for each feedstock;
- (vi) an identification of potential offsite odor receptors based on their proximity to the odor sources and on weather patterns;
- (vii) a description of new odor reduction methods, if proposed, and an evaluation of their feasibility, in terms of effectiveness, cost, and equipment needs;
- (ix) an evaluation of the elimination of specific odorous feedstocks; and
- (x) recommendations for implementing new odor minimization practices, including a schedule.
- (b) The Division may require the elimination of specific odorous feedstocks if a facility fails to meet the
- odor minimization criteria required by Item (17) of this Rule.
- (c) Additional corrective action measures shall be developed and implemented as necessary to meet the requirements of Item (17) of this Rule to minimize odors at the property boundary.
- (19) Compost Facility Training Requirements.
- (a) Facilities permitted as Large Type 1, Large Type 2, all Type 3, and all Type 4 shall have an operator, supervisor, or manager trained in accordance with the requirements in G.S. 130A-309.25.
- (i) Training from a Division-approved training course shall be required every five years. Approval of other training to meet this requirement may be requested by the facility. The Division shall approve other training in cases where the facility can demonstrate other training is at least equivalent to the Division-approved training courses.
- (ii) Persons who have achieved and maintain compost manager certification by a Division-approved compost manager certification program shall be considered as having met these training requirements for the permitted facility.
- (b) Facilities shall be required to provide annual training for facility staff, including a review of the operations plan and permit documents.
- (c) Documentation of training required in Sub-items (a) and (b) of this Item shall be maintained at the facility and made available to the Division upon request unless otherwise approved by the Division.
- (d) Facilities permitted before the readopted effective date of this Rule shall meet the requirements of Sub-item (a) of this Item within three years of the readopted effective date of this Rule. Facilities permitted after the readopted effective date of this Rule shall meet the requirements of Sub-item (a) of this Item within 18 months of permit issuance.
- (14) Miscellaneous Requirements:
- (A) The finished compost shall meet the classification and distribution

- requirements outlined in Rule .1407 of this Section.
- (B) ~~The quality of the final product shall determine the allowable uses as outlined in Rule .1407 of this Section.~~
- (C) ~~The final product shall be approved by the Solid Waste Section as outlined in Rule .1407 Subparagraph (6)(b) of this Section.~~
- (i) ~~Non-compostable solid waste and unacceptable compost shall~~
- be disposed in a solid waste management facility permitted to receive the particular type of waste under 15A NCAC 13B.
- (ii) ~~The amount of compost stored at the facility shall not exceed the designed storage capacity.~~
- Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1407 CLASSIFICATION/

DISTRIBUTION CLASSIFICATION, TESTING, AND DISTRIBUTION OF SOLID WASTE COMPOST PRODUCTS

(a) ~~Compost shall not be applied to the land or sold or given away if the concentration of any metal exceeds the concentration in 40 CFR 503.13(b)(3) [See Table 1 below], unless the concentration of all metals are less than the values in 40 CFR 503.13(b)(1) and records are maintained to show compliance with the cumulative and annual metal levels in 40 CFR 503.13(b)(2) and (4).~~

Table 1

Metals	Concentration mg per kg
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	36
Zinc	2800

(b) ~~Solid Waste shall be classified based on Table 2:~~

Table 2

Grade	Manmade Inerts % dry wt. of inerts	Pathogen Reduction	Metal Concentration
A	≤6	PFRP	Table 1
B	>6	NA	40 CFR 503.13(b)(1)

(c) ~~Man made inerts shall not exceed 1 inch in size.~~

(d) ~~Distribution of the defined grades shall be as follows:~~

- (1) ~~Grade A compost shall have unlimited, unrestricted distribution. This product may be distributed directly to the public;~~
- (2) ~~Grade B compost shall be restricted to distribution for land and mine reclamation, silviculture, and agriculture (on non food chain crops) projects; and~~
- (3) ~~Compost or mulch that is produced at a Type I facility and that contains minimal pathogenic organisms, is free from offensive odor, and contains no sharp particles that would cause injury to persons handling the compost, shall have unrestricted applications and distributions~~

~~if directions are provided with the compost product.~~

- (e) ~~Solid waste compost products may not be distributed or marketed until the permittee has provided adequate test data to the Division as outlined in Rule .1408 of this Section. Within 30 days of receipt of the test data, the Division shall approve or deny the distribution and marketing of the product based upon the compost classification and distribution scheme. As long as the test data required in Rule .1408 of this Section continues to verify that compost is produced to the specifications of this Rule, the Division's approval to distribute the compost shall be ongoing.~~
- (f) ~~The applicant is responsible for meeting any applicable requirements of the North Carolina Department of Agriculture, Fertilizer Section concerning the distribution of this product.~~
- (g) ~~If the owner intends to distribute the product, the owner shall provide instructions to the user on any restrictions on use and~~

~~recommended safe uses and application rates. The following information shall be provided on a label or an information sheet and a copy of the label or information sheet shall be submitted to the Solid Waste Section:~~

- ~~(1) Classification grade as outlined in Paragraph (d) of this Rule;~~
- ~~(2) Recommended uses;~~
- ~~(3) Application rates;~~
- ~~(4) Restrictions on usage; and~~
- ~~(5) Total N (for products containing sludge).~~

(a) Compost or mulch that is produced at a Type 1 facility and that contains minimal pathogenic organisms, is free from offensive odor, and contains no sharp particles, shall have unrestricted application and distribution. Compost analytical testing shall not be required for Type 1 compost if temperature requirements in Rule .1406(11) of this Section have been met and documented.

(b) Compost produced from Type 2, 3, and 4 facilities shall be sampled and analyzed as follows:

- (1) a composite sample of the compost produced at each compost facility shall be analyzed at intervals of every 20,000 tons of compost produced or every six months, whichever comes first, for metals and pathogens;
- (2) compost samples shall be analyzed for the metals listed in 40 CFR 503.13(b)(3), except that analysis for mercury shall not be required for Type 2 and 3 facilities, and analysis for arsenic and selenium shall not be required for Type 2 facilities. The concentration of metals in compost offered for sale or distribution to the public shall not exceed the pollutant concentration limits listed in 40 CFR 503.13(b)(3). 40 CFR 503.13 and 40 CFR 503.32 are incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the U.S. Government Publishing Office website at www.gpo.gov at no cost;
- (3) compost samples shall be analyzed for pathogens, either for fecal coliform or salmonella bacteria. The concentration of pathogens in compost offered for sale or distribution to the public shall not exceed the concentration limits listed in 40 CFR 503.32(a)(3);
- (4) sample collection, preservation, and analysis shall assure valid and representative results. At least three individual samples of equal volume shall be taken from each batch produced in separate areas along the side of the batch. Each sampling point shall be sampled from a depth of two to six feet into the pile from the outside surface of the pile as follows:

(A) metals samples shall be composited and accumulated over a six-month period or at intervals of every 20,000 tons of product produced, whichever comes first; and

(B) pathogens samples shall be a representative composite sample of the compost and shall be processed within a period of time required by the testing procedure;

(5) analytical testing methods shall be in accordance with the procedures of one of the following:

(A) EPA publication SW-846, "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods." This document is incorporated by reference, including subsequent amendments and editions, and may be obtained free of charge at <https://www.epa.gov/hw-sw846>;

(B) the U.S. Department of Agriculture/U.S. Compost Council publication "Test Methods for the Examination of Composting and Compost" (TMECC). This document is incorporated by reference including subsequent amendments and editions, and may be obtained for a fee of two hundred fifty dollars (\$250.00) at <https://compostingcouncil.org/tmecc/> or a copy may be reviewed at the Division of Waste Management, Solid Waste Section office at 217 West Jones Street, Raleigh, N.C. 27603; or

(C) other applicable standards approved by the Division; and

(6) the Division may decrease or increase the parameters to be analyzed or the frequency of analysis based upon monitoring data, changes in the waste stream or processing, or information regarding the potential for the presence of contaminants that are not required to be analyzed in this Paragraph.

(c) Compost produced from Types 2, 3, and 4 facilities that meet the requirements of Subparagraphs (b)(2) and (b)(3) of this Rule shall be classified Grade A compost and shall have unlimited, unrestricted distribution.

(d) The facility operator shall be responsible for meeting the requirements of the North Carolina Department of Agriculture and Consumer Services Plant Industry Division Seed and Fertilizer Section concerning the distribution of this product.

Authority G.S. 130A-309.11.

15A NCAC 13B .1408 METHODS FOR TESTING RECORDKEEPING AND REPORTING REQUIREMENTS

(a) ~~The compost product from Type 2, 3, and 4 facilities shall be sampled and analyzed as follows:~~

- (1) ~~A composite sample of the compost produced at each compost facility shall be analyzed at intervals of every 20,000 tons of compost produced or every six months, whichever comes first, for test parameters for each Type of facility as designated in Table 3 of this Rule. Standard methods equivalent to those in Table 3 may be approved by the Division.~~

Table 3

Parameter	Unit	Facility	Test Method
Foreign Matter	%	all	see Subparagraph (d) of this Rule
Arsenic	mg/kg dry wt.	Type 4	See Appendix A
Cadmium	mg/kg dry wt.	all	
Chromium	mg/kg dry wt.	Type 4	
Copper	mg/kg dry wt.	all	
Lead	mg/kg dry wt.	all	
Mercury	mg/kg dry wt.	Type 4	
Nickel	mg/kg dry wt.	all	
Selenium	mg/kg dry wt.	Type 4	
Zinc	mg/kg dry wt.	all	
Pathogens	See Appendix B	all	See Appendix B
Total N	%	see *	Kjeldahl

* Total N required for products containing sludge subject to 40 CFR 503.

The parameters listed in Table 3 of this Rule may also be determined by methods accepted by the North Carolina Department of Agriculture.

- | | |
|--|--|
| <p>(2) Sample collection, preservation, and analysis shall assure valid and representative results pursuant to a Division approved quality assurance plan. At least three individual samples (of equal volume) shall be taken from each batch produced in separate areas along the side of the batch. Each sampling point shall be at a depth of two to six feet into the pile from the outside surface of the pile. Samples that have been analyzed for metals shall be composited and accumulated over a six month period or at intervals of every 20,000 tons of product produced, whichever comes first. Any sample collected for testing for pathogens and nutrients shall be a representative composite sample of the compost and shall be processed within a period of time required by the testing procedure.</p> <p>(3) Compost containing sewage sludge shall be tested in accordance with 40 CFR 503, Subpart B.</p> <p>(4) The Division may decrease or increase the parameters to be analyzed or the frequency of analysis based upon monitoring data, changes in the waste stream or processing, or information regarding the potential for presence of toxic substances that are not on the list of monitoring parameters.</p> | <p>(5) Foreign matter content shall be determined by passing a dried, weighed sample of the compost product through a one quarter inch screen. EPA Method 160.3 shall be used to dry the sample. The material remaining on the screen shall be visually inspected, and the foreign matter that can be clearly identified shall be separated and weighed. The weight of the separated foreign matter divided by the weight of the total sample shall be determined and multiplied by 100. This shall be the percent dry weight of the foreign matter content.</p> <p>(a)(b) Record Keeping: All facility <u>Facility</u> owners or operators shall record and maintain records for a minimum of no less than five years. Records <u>The following records</u> shall be available for inspection by Division personnel during normal business hours and shall be sent to the Division upon request:</p> <p>(1) Daily <u>daily</u> operational records must be maintained, which include, at a minimum, that include temperature data (length of the composting period) and quantity of material processed;</p> <p>(2) Analytical <u>analytical</u> results on <u>of</u> compost testing;</p> <p>(3) The <u>the</u> quantity, type <u>type</u>, and source of waste received;</p> <p>(4) The <u>the</u> quantity and type <u>type</u> of waste processed into compost;</p> |
|--|--|

- (5) ~~The quantity and type of compost produced by product classification; and the odor management records required by Rule .1405(10) of this Section; and~~
- (6) ~~The the quantity and type of compost removed for use or disposal, by product classification, disposal and the market or permitted disposal facility.~~

~~(b)(e)~~ Annual Reporting: An annual report for the period July 1 to June 30 shall be submitted by all facility owners or operators to the Division ~~by August 1, 1996 and every~~ by August 1 ~~of each year thereafter~~ and shall contain:

- (1) ~~The the~~ facility name, address, and permit number;
- (2) ~~The the~~ total quantity in tons, with sludge values expressed in dry weight, and ~~the~~ type of waste received at the facility during the year covered by the report, including tons of waste received from local governments of origin;
- (3) ~~The total quantity in tons, with sludge values expressed in dry weight, and type of waste processed into compost during the year covered by the report;~~
- (3)(4) ~~The the~~ total quantity in tons ~~and type of~~ compost produced at the facility, ~~by product classification,~~ facility during the year covered by the report;
- (4)(5) ~~The the~~ total quantity in tons ~~and type of~~ compost removed for use or disposal from the facility, ~~by product classification, along with a general description of the market if for use~~ facility during the year covered by the report;
- (5)(6) ~~Monthly~~ monthly temperature monitoring to support Rule .1406 of this Section; and
- (6)(7) ~~Results of tests required in Table 3 of this Rule. the results of analytical testing required by Rule .1407 of this Section.~~

~~(c)(d)~~ Yearly totals of solid waste received and composted shall be reported back to the local government of origin for annual recycling reporting.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

**15A NCAC 13B .1409 ~~APPROVAL OF ALTERNATIVE PROCEDURES AND PROCEDURES,~~
VERMICOMPOSTING, AND ANAEROBIC DIGESTION REQUIREMENTS**

(a) An owner or operator of a composting ~~facility,~~ facility subject to the provisions of this Rule, Section may request in writing the approval of an alternative procedure for the facility or the compost that is produced. The following information shall be submitted to the Solid Waste Section:

- (1) ~~The the~~ specific facility for which the exception is requested;
- (2) ~~The the~~ specific provisions of this Section for which the exception is requested;
- (3) ~~The the~~ basis for the exception;

- (4) ~~The the~~ alternate procedure or requirement for which the approval is sought and a demonstration that the alternate procedure or requirement provides equivalent protection of the public health and the environment; and
- (5) ~~A~~ a demonstration of the effectiveness of the proposed alternate procedure.

~~(b)~~ Vermicompost Facilities. This Paragraph shall be applicable to vermicompost facilities that receive solid waste as defined in G.S. 130A-290. Facilities that receive only animal manure or only municipal wastewater treatment sludge, or both, shall not be subject to this Paragraph.

- (1) The following operations shall be exempt from the requirements of this Section:

- (A) backyard vermicomposting; and
- (B) farming operations where the vermicompost is produced from materials grown on the owner's land and re-used on the owner's land.

- (2) Vermicompost facilities meeting the following conditions shall be exempt from the permitting requirements in Rule .1405 of this Section:

- (A) the site receives pre- and post-consumer food waste, manure, vegetative agricultural waste, yard and garden waste, untreated, unpainted, and uncontaminated wood material, source separated paper, or any combination thereof;
- (B) no more than 100 cubic yards of material shall be onsite at any time. This volume shall include feedstock storage, processing, pre-composting, and active vermicomposting, but shall not include finished vermicompost;
- (C) outdoor areas of the site used for feedstock storage, processing, pre-composting, or vermicomposting in open areas or open containers or bins shall meet the siting criteria and setback requirements of Rule .1404(a)(1) through (a)(10) of this Section, except that the minimum setback to the property line shall be at least 50 feet and the minimum setback to residences or dwellings not owned and occupied by the owner or operator shall be at least 200 feet;
- (E) outdoor feedstock storage, processing, pre-composting, and vermicomposting operations areas, that are enclosed on all sides in containers or bins shall maintain a minimum setback to the property line of at least 25 feet;
- (F) the site operates in such a manner that dust and odors do not constitute a public nuisance;

- (G) surface water shall be diverted from the operational and storage areas. Leachate shall be contained onsite and treated to meet the standards of the applicable off-site disposal method;
 - (H) for facilities producing vermicompost that is distributed to the public or used in public areas, the owner meets the pathogen testing and record keeping requirements of Rule .1407(b) and .1408(a) of this Section for a Type 3 facility; and
 - (I) the site operates in accordance with all applicable State or local laws, ordinances, rules, regulations, or orders.
- (3) A permit shall be required for vermicompost facilities that do not meet the conditions of Subparagraphs (1) or (2) of this Paragraph. A permit application for a vermicomposting facility shall include the information required by Rules .1404 and .1405 of this Section, except that Rules .1405(9)(f) through (9)(h) of this Section do not apply. Operations or parts of operations that are indoors shall be exempt from the siting requirements of Rule .1404 of this Section. Permitted vermicomposting facilities shall be subject to:
- (A) the operational requirements of Rule .1406(1) through (9), (14), and (16) of this Section;
 - (B) the sampling and testing requirements of Rule .1407 of this Section;
 - (C) the reporting and recordkeeping requirements of Rule .1408 of this Section; and
 - (D) the closure requirements of Rule .1410 of this Section.
- (c) Anaerobic Digestion Facilities. This Paragraph shall be applicable to anaerobic digestion facilities that receive solid waste as defined in G.S. 130A-290. Facilities that receive only animal manure or only municipal wastewater treatment sludge, or both, shall not be subject to this Paragraph.
- (1) A solid waste management permit shall be required for the areas of the facility that manage solid waste. These areas shall include the incoming waste receiving area, the digestate handling area, and the digestate final disposition and any other areas of the operation where solid waste is exposed to the environment.
 - (2) A permit application shall contain:
 - (A) the information required by Rules .1404 and .1405 of this Section, with the exception of Rule .1405(9)(f) through (9)(h). Operations or parts of operations that are in buildings enclosed on all sides shall be exempt
- (B) detailed drawings of the following within the waste management areas:
 - (i) hoppers, bays, or vessels, and all other site-specific features related to solid waste management activities; and
 - (ii) for indoor operations, plan and profile drawings of the buildings with areas and features labeled.
- (3) Permitted anaerobic digestion facilities shall be subject to:
- (A) the operational requirements of Rule .1406(1) through (9), (14), and (16) of this Section;
 - (B) the sampling and testing requirements of Rule .1407 of this Section for the digestate;
 - (C) the reporting and recordkeeping requirements of Rule .1408 of this Section; and
 - (D) the closure requirements of Rule .1410 of this Section.
- ~~(b) An individual may request in writing the approval of a solid waste composting pilot or demonstration project for the purpose of evaluating the feasibility of such a project. The following information shall be submitted to the Solid Waste Section:~~
- ~~(1) The owner, operator, location, and contact numbers for the project;~~
 - ~~(2) The specific primary waste stream for which the project is to be evaluated;~~
 - ~~(3) The specific time frame for the project;~~
 - ~~(4) The estimated amount of each type of waste or bulking material to be composted;~~
 - ~~(5) The basis for running the pilot or demonstration project;~~
 - ~~(6) A description of all testing procedures to be used;~~
 - ~~(7) A description of the process to be used, including the method of composting and details of the method of aeration;~~
 - ~~(8) The expected final usage or disposal of the final product; and~~
 - ~~(9) An outline of the final report to be submitted to the Solid Waste Section upon completion of the project.~~
- ~~(c) For Paragraph (a) of this Rule, the Division will review alternative procedures only to the extent that adequate staffing is available.~~
- ~~(d) Permits shall not be required for primary and secondary school educational projects that take place on the school grounds and that receive less than one cubic yard of material per week.~~

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

15A NCAC 13B .1410 CLOSURE REQUIREMENTS

(a) When the permitted compost facility ceases operations, the owner or operator shall meet the following conditions:

- (1) all feedstock and unfinished compost materials shall be removed from the site and taken to a permitted solid waste facility within 180 days, unless otherwise approved by the Division;
- (2) finished compost materials left onsite shall comply with G.S. 130A-309.05; and
- (3) the owner or operator shall notify the Division in writing upon completion of the requirements of Subparagraph (1) of this Paragraph.

(b) When a permitted compost facility has been closed in accordance with the requirements of the Division, the permit shall be terminated. Future compost operations at the site shall require a new permit pursuant to this Section.

Authority G.S. 130A-294; 130A-309.03; 130A-309.11; 130A-309.29.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16A .0105; 16H .0208; 16N .0607 and amend the rules cited as 21 NCAC 16A .0101; 16B .0101, .0303; 16C .0101; 16H .0201; 16I .0106; 16N .0501, .0603; 16V .0101, .0102; and 16W .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdentalboard.org

Proposed Effective Date: *October 1, 2019*

Public Hearing:

Date: *July 11, 2019*

Time: *6:30 p.m.*

Location: *2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560*

Reason for Proposed Action:

21 NCAC 16A .0101 is proposed for amendment to revise the definitions used in this Chapter, specifically defining supervision, direct supervision and supervision and direction, as well as direction and under direction.

21 NCAC 16A .0105 is proposed regarding the suspension of the Board's authority to expend funds to satisfy a statutory requirement.

21 NCAC 16N .0607 is proposed to provide a list of the disciplinary factors considered once the Board concludes that the Respondent has violated the Dental Practice Act, the Dental Hygiene Practice Act, or the Board's Rules.

21 NCAC 16B .0101 is proposed for amendment to revise the examinations required for persons desiring to practice dentistry and the exemptions to the examination requirement.

21 NCAC 16B .0303 is proposed for amendment to further clarify the qualifications for an approved testing agency.

21 NCAC 16C .0101 is proposed for amendment to clarify that the examination requirement does not apply to dental hygienists who are seeking licensure by credentials.

21 NCAC 16H .0201 is proposed for amendment to correct a cross-reference to another section of a rule that was amended.

21 NCAC 16H .0208 is proposed to provide limited exception for a Dental Assistant II to assist a Limited Supervision Hygienist at the request of the Dean of the ECU School of Dental Medicine.

21 NCAC 16I .0106 is proposed for amendment to remove the \$25 fee for each duplicate of any license or certificate.

21 NCAC 16N .0501 is proposed for amendment to clarify who has the right to a hearing and acceptable methods of service.

21 NCAC 16N .0603 is proposed for amendment to provide a time period for objection to the subpoena and to give the Presiding Officer authority to conduct the hearing and rule on objections.

21 NCAC 16V .0101 is proposed for amendment to further define unprofessional conduct by a dentist.

21 NCAC 16V .0102 is proposed for amendment to further define unprofessional conduct by a dental hygienist.

21 NCAC 16W .0102 is proposed for amendment to further define appropriate training for public health hygienists, as well as permitting the public health hygienist to place sealants under direction of a licensed dentist.

Comments may be submitted to: *Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560*

Comment period ends: *August 16, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (\geq \$1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required**

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0101 DEFINITIONS

As used in this Chapter:

- (1) "Applicant" means a person applying for any license or permit issued by the Board;
- (2) "Board" means the North Carolina State Board of Dental Examiners;
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North Carolina;
- (4) "Current license" means a license that is renewed by the licensing board; ~~board as required;~~
- (5) "CPR certification" means that the licensee has ~~successfully~~ completed a CPR course that meets American Red Cross or American Heart Association standards for certification and that provides manikin testing on the subjects of cardio-pulmonary resuscitation. The course must also cover the use of an automatic external defibrillator, unconscious and conscious choking and rescue breathing, provided that the foregoing requirements shall not be interpreted in any way that violates the Americans with Disabilities Act. The manikin testing must be provided by an instructor who is ~~physically~~ present with the students;
- (6) "Internship" means practice in an educational training program. Internship does not mean practice under an intern permit while holding an unrestricted general dental or dental specialty license issued by a state, U.S. territory or the District of Columbia; ~~and~~
- (7) "Unrestricted license" means a license that is not under suspension or inactivation, or subject to the terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the license, or limited by supervision or location ~~requirements~~; requirements;
- (8) Except where otherwise defined by these Rules or by statute, "supervision," "direct supervision," and "supervision and direction" means that the dentist overseeing treatment is present in the same facility or location and available during the performance of the acts that are being performed pursuant to that dentist's order, control, and approval and that the dentist must examine and evaluate the results of such acts; and
- (9) Except where otherwise defined by these Rules or by statute, "direction" or "under direction" means that the dentist ordering treatment does not have to be present in the same facility or location during the performance of the acts that are being performed pursuant to that dentist's order, control, and approval, but that dentist shall be responsible for all consequences or results arising from such acts.

Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48; 90-224; 90-224.1; 90-226.

21 NCAC 16A. 0105 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

If the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses, registrations, and permits and to collect all fees pursuant to G.S. 90-39 and the rules of this Chapter, but all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 90-28; 90-39; 93B-2(d).

SUBCHAPTER 16B - LICENSURE DENTISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS

(a) All persons desiring to practice dentistry in North Carolina ~~are required to~~ shall pass a Board approved, as set forth in these Rules, approved written and clinical examinations ~~examinations,~~ as set forth in Rule .0303 of this Subchapter before receiving a license.

(b) The examination requirement ~~does~~ shall not apply to persons who do not hold a North Carolina dental license and who are seeking volunteer licenses pursuant to ~~G.S. 90-21.107~~ G.S. 90-21.107, or licensure by endorsement pursuant to Rules .1001 and .1002 of this Subchapter, or licensure by credentials pursuant to Rule .0501 of this Subchapter.

(c) All persons practicing dentistry in North Carolina shall maintain ~~current unexpired~~ CPR certification at all times.

Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-38; 90-48.

SECTION .0300 - APPLICATION FOR LICENSURE

21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS

(a) All applicants for dental licensure shall achieve a passing ~~score~~ score of at least 80 percent on the Board's sterilization and jurisprudence examinations. Applicants may take reexamination in accordance with ~~Reexamination on the written examinations shall be governed by~~ Rule .0317 of this Section.

(b) All applicants for dental licensure shall achieve passing scores on ~~Parts I and II of the Dental National Board~~ the examination administered by the Joint Commission on National Dental Examinations and written and clinical examinations administered by ~~the Board or~~ Board approved testing agencies. The Board shall determine which testing agencies are approved based on the requirements set forth in Paragraphs (c) and (d) of this Rule.

(c) To qualify as an approved testing agency, the test-development ~~Test development~~ agencies shall permit ~~must allow~~ a representative of the Board representation to serve on the Board of Directors and the Examination Review Committee of the agency, or equivalent committee and allow Board input in the examination development and administration.

(d) To qualify as an approved testing agency, the The clinical examination administered by a testing agency shall:

- ~~(1)~~ (1) be ~~substantially equivalent to or an improvement to the clinical licensure examination most recently administered by the Board;~~
- ~~(2)~~(1) include procedures performed on human subjects as part of the assessment of restorative clinical competencies;
- ~~(3)~~(2) include evaluations in clinical periodontics and at least three of the following subject matter areas:
 - (A) endodontics, clinical abilities testing;
 - (B) amalgam preparation and restoration;
 - (C) anterior composite preparation and restoration;
 - (D) posterior ceramic or composite preparation and restoration;
 - (E) prosthetics, written or clinical abilities testing;
 - (F) oral diagnosis, written or clinical abilities testing; or
 - (G) oral surgery, written or clinical abilities testing; and
- ~~(4)~~(3) provide the following:
 - (A) anonymity between applicants and examination graders;
 - (B) standardization and calibration of graders;
 - (C) a mechanism for post exam analysis;
 - (D) conjunctive scoring, which is scoring that requires applicants to earn a passing grade on all sections or areas tested and that does not allow weighted, averaged or overall scoring to compensate for failures in individual subject areas;
 - (E) a minimum passing score set by the testing agency for each subject area tested;
 - (F) an annual review of the examination;
 - (G) a task analysis performed at least once every seven years, which that surveys dentists nationwide to determine the content of the examination;
 - (H) a ~~defined~~ system of quality assurance to ensure uniform, consistent administration of the examination at each testing site; and
 - (I) does not permit a dental instructor to grade candidates at any institution at which the instructor is employed.

(e) The Board shall accept examination scores for five years following the date of ~~such~~ the examinations. Each applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply more than five years after the examination date to seek licensure must re-take the examination.

(f) The applicant shall comply with all requirements of the testing agency in applying for and taking the examination.

~~(g) The Board shall determine which examinations meet the criteria set out in Paragraph (d) of this Rule.~~

Authority G.S. 90-30; 90-48.

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16C .0101 LICENSURE

(a) All dental hygienists shall be licensed by the North Carolina State Board of Dental Examiners before practicing dental hygiene in this state.

(b) The examination requirement ~~does~~ shall not apply to persons who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to ~~G.S. 90-21.107 or license G.S. 90-21.107, licensure~~ by endorsement pursuant to Rules 16G .0107 or .0108 of this ~~Chapter, Chapter~~ or licensure by credentials pursuant to Rule .0501 of this Subchapter.

(c) All dental hygienists shall maintain ~~current~~ an unexpired CPR certification at all times.

Authority G.S. 90-223; 90-224.

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

21 NCAC 16H .0201 GENERAL PERMITTED FUNCTIONS OF DENTAL ASSISTANT I

(a) A Dental Assistant I may assist a dentist as a chairside assistant ~~as long as provided that~~ the acts and functions of the Dental Assistant I do not constitute the practice of dentistry or dental hygiene.

(b) A Dental Assistant I may do and perform only routine dental assisting procedures such as oral hygiene ~~instruction; instruction,~~ chairside ~~assisting; assisting,~~ application of topical fluorides or topical ~~anesthetics; anesthetics,~~ and exposure of radiographs, provided that the assistant can show ~~evidence of~~ compliance with radiography training consistent with G.S. 90-29(c)(12). ~~However, functions~~ Functions of a Dental Assistant II also may be delegated to a Dental Assistant I pursuant to ~~21 NCAC 16H .0104(2)(a); 21 NCAC 16H .0104(b).~~

Authority G.S. 90-29(c)(9); 90-48.

21 NCAC 16H .0208 LIMITED EXCEPTION FOR ASSISTING HYGIENISTS

A Dental Assistant II may assist a Limited Supervision Hygienist, who is qualified and practicing pursuant to 21 NCAC 16Z .0101-.0103, in providing oral hygiene instruction, applying sealants, applying topical fluorides, applying fluoride varnishes, and while the Hygienist is performing prophylaxis, provided:

- (1) The treatment is provided to children in school-based oral health programs under a School-

- Based Oral Health Initiative of the Carolinas grant; and
- (2) Prior to any treatment being provided, a licensed North Carolina dentist has:
- (a) examined the patient;
 - (b) ordered the treatment provided to the patient; and
 - (c) agreed to provide the patient with any necessary additional treatment resulting from the treatment rendered in accordance with this Rule.

Authority G.S. 90-29(c)(9); 90-48; 90-233.

**SUBCHAPTER 16I - ANNUAL RENEWAL OF LICENSE
AND CONTINUING EDUCATION REQUIREMENTS:
DENTAL HYGIENIST**

SECTION .0100 – ANNUAL RENEWAL

**21 NCAC 16I .0106 FEE FOR LATE FILING AND
DUPLICATE LICENSE**

~~(a)~~ If the application for a renewal certificate, accompanied by the renewal fee of eighty-one dollars (\$81.00) and annual fee to assist in funding for programs for impaired dentists of twenty-five dollars (\$25.00), required, is not received in the Board's office before the close of business on January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

~~(b) A fee of twenty five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the Board.~~

Authority G.S. 90-39; 90-227; 90-232.

**SUBCHAPTER 16N - RULEMAKING AND
ADMINISTRATIVE HEARING PROCEDURES
SECTION .0500 - ADMINISTRATIVE HEARING
PROCEDURES**

21 NCAC 16N .0501 RIGHT TO HEARING

When the Board acts, or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner that which will affect the rights, duties, or privileges of a ~~person,~~ licensee or applicant for a license or permit, such person has a right to an administrative hearing. When the Board proposes to act in such a manner, it shall give such person notice of his right to a hearing by mailing by certified mail to him at his last known address a notice of the proposed action and a notice of a right to a hearing. Notice of hearing may also be given by any method of service permitted in G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record who accepts service on behalf of the person.

Authority G.S. 150B-38(h).

**SECTION .0600 - ADMINISTRATIVE HEARINGS:
DECISIONS: RELATED RIGHTS AND PROCEDURES**

21 NCAC 16N .0603 SUBPOENAS

(a) A request for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any documents sought with specificity;
~~and~~
- (3) include the ~~full~~ name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

(b) The Board shall issue the requested subpoenas within three days of the receipt of the request.

(c) Subpoenas shall contain:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location of the hearing in which the witness is commanded to appear;
- (4) a ~~particularized~~ description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued; and
- (6) a return of service form.

(d) The "return of service" form, as filled out, ~~shows shall show~~ the name and capacity of the person serving the subpoena, the date the subpoena was delivered to the person directed to make service, the date service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(e) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.

(f) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Such objection shall include a statement of all reasons why the subpoena should be revoked or modified. These reasons may include any basis sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that the burden of appearance or production would be so disruptive as to be unreasonable in light of the significance outweighs the relevance of the evidence sought, or other undue hardship.

(g) Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(h) The party who requested the ~~subpoena subpoena, at such time as may be granted by the Board,~~ may file a written response to the ~~objection.~~ objection within 10 days of receipt or 7 days prior to the contested case hearing, whichever is sooner. The written response shall be served by the requesting party on the objecting witness simultaneously with the filing of the response with the Board.

(i) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and ~~may shall~~ notify any other party or parties of a hearing, hearing, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(j) ~~The majority Presiding Officer of the Board members hearing the contested case shall conduct the hearing and rule on the objection challenge and issue a written decision to all parties and made a part of the record.~~ or, in his or her discretion, may involve the other Board members. The Presiding Officer may either permit the parties to submit affidavits in advance of the hearing or, if deemed necessary, permit the parties to present evidence and testimony at the hearing, limited to the narrow questions raised by the objection and response.

Authority G.S. 90-28; 90-48; 90-223(b); 150B-39; 150B-40.

21 NCAC 16N .0607 DISCIPLINARY FACTORS

If the Board concludes that the Respondent has violated the Dental Practice Act, the Dental Hygiene Practice Act, or the Board's Rules, it shall consider the following factors relevant to the discipline to be imposed:

- (1) The Board shall consider revocation of a license or permit if it concludes that lesser discipline is insufficient to protect the public and that one or more of the following factors applies:
 - (a) Respondent caused or contributed to a patient's death, permanent organic brain dysfunction, physical injury, or severe medical emergency requiring hospitalization;
 - (b) Respondent committed a felony or committed a misdemeanor involving moral turpitude; or
 - (c) Respondent engaged in fraud, dishonesty, misrepresentation, deceit, or fabrication related to the practice of dentistry or dental hygiene, including attempts to obtain or collect any fees.
- (2) The Board shall consider revocation or suspension of a license or permit if it concludes that lesser discipline is insufficient to protect the public and that one or more of the following factors applies:
 - (a) Respondent's ability to practice dentistry or dental hygiene is impaired;
 - (b) Respondent is mentally, emotionally or physically unfit to practice dentistry or dental hygiene;
 - (c) Respondent is incompetent in the practice of dentistry or dental hygiene;
 - (d) Respondent's violations resulted in harm or potential harm to a patient, the public, or the dental or dental hygiene profession;
 - (e) Respondent failed to comply with a prior Board decision or consent order;
 - (f) Respondent's violations demonstrate a lack of honesty, trustworthiness, or integrity;
 - (g) Respondent committed acts of fraud, misrepresentation, deceit, or fabrication;

- (h) Respondent committed multiple instances of negligence or malpractice in treating patients, including failure to complete treatment for patients;
 - (i) Respondent distributed or caused to be distributed any intoxicant, drug, or narcotic for an unlawful purpose;
 - (j) Respondent failed to participate in the Board's investigation and disciplinary process;
 - (k) Respondent aided a person or entity not licensed in this State to perform acts or services that can only be performed by a dentist or dental hygienist licensed in this state; or
 - (l) Respondent committed any acts set forth in Sub-items (1)(a)-(c) of this Rule.
- (3) In all cases, the Board shall consider the following factors in imposing discipline, including revocation, suspension, censure, probative terms, and other disciplinary measures:
- (a) effect of Respondent's violation on a patient or other individuals;
 - (b) Respondent's elevation of his or her interest above that of the patient or the public;
 - (c) prior disciplinary violation in this state or any other jurisdiction, or the absence thereof;
 - (d) dishonest or selfish motive for the violation found, or the absence thereof;
 - (e) a pattern of violations;
 - (f) Respondent's intent, or lack thereof, either to commit acts where the harm or potential harm is foreseeable or to cause the harm or potential harm resulting from the acts;
 - (g) vulnerability of patient or victim, including violations involving an individual with a physical or mental disability or impairment;
 - (h) Respondent's failure to respond, or provide responsive documents or information, to requests or subpoenas from the Board during an investigation or disciplinary proceedings;
 - (i) Respondent's obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the Board;
 - (j) Respondent's submission of false evidence, false statements, or other deceptive practices during the Board's investigation or disciplinary process;
 - (k) Respondent's refusal to acknowledge the wrongful nature of the violation;

- (l) impact of Respondent's actions on the patient's or public's perception of the dental or dental hygiene profession;
- (m) Respondent's efforts to make restitution or to rectify consequences of misconduct, or the failure to do so;
- (n) Respondent's physical or mental disability or impairment diagnosed by a treating medical professional, which condition caused or contributed to Respondent's conduct in the opinion of the treating medical professional;
- (o) the degree of Respondent's rehabilitation, if any, prior to any disciplinary action;
- (p) Respondent's voluntary disclosure to the Board or cooperative attitude toward the proceedings;
- (q) Respondent's remorse for the violation or effect of the violation;
- (r) Respondent's character or reputation in the community;
- (s) remoteness in time of any prior violation by or discipline of Respondent;
- (t) Respondent's degree of experience in the practice of dentistry or dental hygiene;
- (u) imposition of other penalties or sanctions on Respondent for the conduct constituting the violation; and
- (v) any other factors found to be pertinent to the consideration of the discipline to be imposed on Respondent.

- (4) ~~Violating~~ violating any order of the Board previously entered in a disciplinary hearing, or failing to comply with a subpoena of the Board;
- (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
- (6) ~~Failing~~ failing to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
- (7) ~~Prescribing,~~ prescribing procuring, dispensing, or administering any controlled substance for personal use, which does not include those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) ~~Pre-signing~~ pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substance;
- (9) ~~Forgiving~~ forgiving the co-payment provisions of any insurance policy, insurance contract, health prepayment contract, health care plan, or nonprofit health service plan contract by accepting the payment received from a third party as full payment, unless the dentist discloses to the third party that the patient's payment portion will not be collected;
- (10) ~~Failing~~ failing to provide radiation safeguards required by the State Department of Health and Human Services, the federal Occupational and Safety Health Administration, the Food and Drug Administration, and the Environmental Protection Agency;
- (11) ~~Having~~ having professional connection with or lending one's name to the unlawful practice of dentistry;
- (12) ~~Using~~ using the name of any deceased or retired and licensed dentist on any office door, directory, stationery, bill heading, or any other means of communication any time after one year following the death or retirement from practice of said dentist;
- (13) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (14) ~~Failing~~ failing to file a truthful response to a notice of complaint within the time allowed in the notice;

Authority G.S. 90-41; 90-229.

SUBCHAPTER 16V – UNPROFESSIONAL CONDUCT

SECTION .0100 - UNPROFESSIONAL CONDUCT

21 NCAC 16V .0101 DEFINITION: UNPROFESSIONAL CONDUCT BY A DENTIST

Unprofessional conduct by a dentist shall include the following:

- (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined;
- (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board;
- (3) ~~Committing~~ committing any act that would constitute assault or battery, including sexual assault or ~~battery~~ battery, as defined by Chapter

- (15) ~~Failing~~ failing to notify the Board of a change in current physical address within 10 business days;
- (16) ~~Permitting~~ permitting more than two dental hygienists for each licensed dentist in the office to perform clinical hygiene tasks;
- (17) ~~Failing~~ failing to produce diagnostic radiographs or other treatment records on request of the Board or its investigator;
- (18) ~~Soliciting~~ soliciting employment of potential patients in person or by live telephone solicitation or permitting or directing another to do so;
- (19) ~~Giving~~ giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (20) ~~Failing~~ failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- (21) ~~Withholding~~ withholding or refusing to complete a treatment procedure for ~~to~~ an existing patient conditioned upon payment of an outstanding balance;
- (22) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential patients;
- (23) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients, or directing or allowing an employee or agent to do so;
- (24) ~~Making~~ making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigations by the Board;
- (25) ~~Refusing~~ refusing to permit a Board agent or employee to conduct a sterilization inspection;
- (26) ~~Acquiring~~ acquiring any controlled substance from any source by fraud, deceit or misrepresentation; and
- (27) ~~Practicing~~ practicing outside the scope of dentistry, as set forth in G.S. 90-29.

- (3) ~~Committing~~ committing any act that would constitute assault or battery, including sexual assault or ~~battery~~ battery, as defined by Chapter 14 of the North Carolina General ~~Statutes~~ Statutes, in connection with the provision of dental hygiene services;
- (4) ~~Violating~~ violating an order of the Board previously entered in a disciplinary hearing or failing to comply with a subpoena of the Board;
- (5) ~~Conspiring~~ conspiring with any person to commit an act, or committing an act that would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any person who testifies or cooperates with the Board during any investigation of any licensee;
- (6) ~~Failing~~ failing to identify to a patient, patient's guardian, an employer, or the Board the name of any person or agent who renders dental treatment or services upon request;
- (7) ~~Procuring~~ procuring dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) ~~Acquiring~~ acquiring any controlled substance from any pharmacy or other source by misrepresentation, fraud or deception;
- (9) ~~Having~~ having professional connection with or lending one's name to the illegal practice of dental hygiene;
- (10) ~~Failing~~ failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (11) ~~Failing~~ failing to file a truthful response to a notice of complaint, within the time allowed in the notice;
- (12) ~~Failing~~ failing to notify the Board of a change in current physical address within 10 business days;
- (13) ~~Working~~ working in a clinical hygiene position if the ratio of hygienists to licensed dentists present in the office is greater than 2:1;
- (14) ~~Soliciting~~ soliciting employment of potential patients in person or by telephone or assisting another person to do so;
- (15) ~~Giving~~ giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (16) ~~Using~~ using protected patient health information, as defined by 45 CFR 160.103, to solicit potential patients;
- (17) ~~Making~~ making misleading or untruthful statements for the purpose of procuring potential patients or assisting another to do so;

Authority G.S. 90-28; 90-29; 90-41; 90-48; 90-223(b).

**21 NCAC 16V .0102 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTAL
HYGIENIST**

Unprofessional conduct by a dental hygienist shall include the following:

- (1) ~~Having~~ having professional discipline imposed, including the denial of licensure, by the dental hygiene licensing authority of another state, territory, or country. For purposes of this Rule, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined;
- (2) ~~Presenting~~ presenting false or misleading testimony, statements, or records to the Board

- (18) ~~Making~~ making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigation by the Board; and
- (19) ~~Practicing~~ practicing outside the scope of dental hygiene, as defined in 90-221(a).

Authority G.S. 90-29; 90-221; 90-223; 90-229.

SUBCHAPTER 16W - PUBLIC HEALTH HYGIENISTS

SECTION .0100 - PUBLIC HEALTH HYGIENISTS

21 NCAC 16W .0102 TRAINING FOR PUBLIC HEALTH HYGIENISTS

(a) Prior to performing clinical procedures pursuant to G.S. 90-233(a) under the direction of a duly licensed dentist, a public health hygienist must have:

- (1) five years of experience in clinical dental hygiene;
- (2) ~~current~~ unexpired CPR certification, taken in a live hands-on course;

- (3) six hours of continuing education in medical emergencies each year in addition to the minimum continuing education required for license renewal; and
- (4) ~~such~~ other training as may be required by the ~~Dental~~ Oral Health Section of the Department of Health and Human Services.

(b) For purposes of this Rule, a minimum of 4,000 hours, the majority of which must be spent performing ~~primarily~~ prophylaxis or periodontal debridement under the supervision of a duly licensed ~~dentist~~ dentist, shall be equivalent to five years experience in clinical dental hygiene.

(c) Notwithstanding Subparagraph (a)(1) and Paragraph (b) of this Rule, a public health hygienist may place sealants under the direction of a duly licensed dentist if the hygienist has a minimum of 2,000 hours of clinical experience assisting in the placement of sealants with the Oral Health Section of the Department of Health and Human Services.

Authority G.S. 90-223; 90-233(a).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS
AND COMMISSIONS**

CHAPTER 34 - BOARD OF FUNERAL SERVICE

Rule-making Agency: Board of Funeral Service

Rule Citation: 21 NCAC 34C .0102-.0106, .0201-.0202, .0205-.0207, .0303, and .0306

Effective Date: May 24, 2019

Date Approved by the Rules Review Commission: May 16, 2019

Reason for Action: The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite Session Law 2018-78, Sections 20 and 24.

On June 25, 2018 the North Carolina General Assembly passed Session Law 2018-78 (House Bill 529), "An Act Amending the Laws Pertaining to the Practice of Funeral Service." Among other things, House Bill 529 legalized alkaline hydrolysis as a permissible method of the final disposition of human remains in North Carolina. The General Assembly also tasked the Board with promulgating rules to regulate the practice of hydrolysis in the State. The Sections of House bill 529 pertaining to alkaline hydrolysis were assigned an effective date of October 1, 2018.

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 34C .0102 FORM OF DOCUMENTS

When any provision of Article 13F, Chapter 90, of the North Carolina General Statutes or any rule in this Subchapter requires a crematory or hydrolysis licensee to obtain any death certificate, report, authorization, waiver, statement or other document prior to ~~cremation, cremation or hydrolysis, it shall be deemed that such requirements are complied with if the crematory or hydrolysis licensee receives the applicable~~ may accept the document or documents, in the time specified, in the form of the original, a photocopy, photocopy, or by electronic or facsimile transmission.

Authority G.S. 90-210.127; 90-210.134(a); 90-210.136(d),(h).

**21 NCAC 34C .0103 APPLICATION FORM FOR
CREMATORY OR HYDROLYSIS LICENSE**

(a) All applications for a crematory or hydrolysis license shall be made on forms provided by the Board. The application shall state the following information:

- (1) the name of the applicant;
- (2) address;

- (3) type of business entity;
- (4) location of ~~crematory;~~ crematory or hydrolysis facility;
- (5) description of crematory or hydrolysis facilities and equipment;
- (6) name and address of each crematory or hydrolysis technician;
- (7) name and address of the crematory or hydrolysis manager; and
- (8) any criminal convictions of the applicant and manager. ~~manager; and other information the Board deems necessary as required by law.~~

(b) Three affidavits of the moral character of the owners, partners, ~~or~~ officers and ~~of the~~ manager in compliance with G.S. 90-210.26 shall accompany the application.

Authority G.S. 90-210.123; 90-210.134(a); 90-210.136(d),(h).

**21 NCAC 34C .0104 CREMATORY OR HYDROLYSIS
LICENSE CERTIFICATE**

The Board shall issue each crematory or hydrolysis licensee a certificate ~~for to operate a crematory or hydrolysis facility upon demonstrating that all requirements for a crematory license have been satisfied. All crematory license certificates shall be issued on certificate forms provided by the Board, a finding that the licensee~~ has complied with the rules of this Chapter.

Authority G.S. 90-210.123; 90-210.134(a); 90-210.136(d),(h).

**21 NCAC 34C .0105 CREMATORY OR HYDROLYSIS
INSPECTION FORM**

The findings of all crematory or hydrolysis facility inspections shall be recorded and filed on report forms provided by the Board. ~~The crematory licensee shall furnish the name and address of the crematory, names of the owner and manager, acknowledgement of the findings of the inspector, the date for compliance, verification by the crematory licensee that any violations have been corrected, the date of the verification, and other information the Board deems necessary as required by law. Verifications by the crematory licensee that any violations have been corrected must be received by the Board no later than seven days after the date for compliance.~~

Authority G.S. 90-210.123; 90-210.134(a); 90-210.136(d),(h).

21 NCAC 34C .0106 DEFINITIONS

The following definitions shall apply for purposes of complying with the provisions of Article 13F, Chapter 90, of the North Carolina General Statutes and any rule in Chapter 34, Title 21 of the North Carolina Administrative Code:

(a) "Hydrolysis operator" shall have the same meaning as the term "hydrolysis licensee" as defined by G.S.

90-210.136(a)(3).

(b) "Aquamation" and "resomation" shall have the same meaning as "alkaline hydrolysis" as defined by G.S. 90-210.136(a)(1).

(c) "Certificate of hydrolysis" means a certificate provided by the hydrolysis manager who performed the hydrolysis that meets the same minimum requirements for a "certificate of cremation" as set forth in G.S. 90-210.121(5).

(d) "Cremation center" shall have the same meaning as "crematory" or "crematorium" as defined by G.S. 90-210.121(11).

(e) "Final disposition" of human remains that have been hydrolyzed means the hydrolysis and the ultimate interment, entombment, inurnment, or scattering of the hydrolyzed remains or the return of the hydrolyzed remains by the hydrolysis licensee to the authorizing agent or such agent's designee as provided by Article 13F, Chapter 90 of the North Carolina General Statutes. Upon the written direction of the authorizing agent, hydrolyzed remains may take various forms.

(f) "Hydrolysis container," as defined by G.S. 90-210.136(a)(2), is one made of biodegradable material and also shall comply with the provisions of G.S. 90-210.121(9)f.

(g) "Hydrolysis chamber," "hydrolysis unit," or "hydrolysis vessel" means the enclosed space within which the hydrolysis process occurs. Hydrolysis chambers regulated by Article 13F, Chapter 90, of the North Carolina General Statutes shall be used exclusively for the hydrolysis of human remains.

(h) "Hydrolyzed remains" means all human remains recovered after the completion of the hydrolysis process, including pulverization, that leaves only bone fragments reduced to unidentifiable dimensions.

(i) "Hydrolysis facility" or "hydrolysis center" means the building or buildings, or portion of a building or buildings, on contiguous piece of property that houses the hydrolysis equipment, the holding and processing facilities, the business offices, and any other components of the hydrolysis business.

(j) "Hydrolysis interment container" means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(k) "Hydrolysis manager" means the person who is responsible for the management and operation of the hydrolysis facility. A hydrolysis manager shall meet the same minimum requirements for a "crematory manager" as set forth in G.S. 90-210.121(13).

(l) "Hydrolysis society" means any person, firm, corporation, or organization that is affiliated with a hydrolysis licensee licensed under Article 13F, Chapter 90, of the North Carolina General Statutes and provides hydrolysis information to consumers.

(m) "Hydrolysis technician" means any employee of a hydrolysis licensee who has a certificate confirming that the hydrolysis technician has attended a training course approved by the Board.

Authority G.S. 90-210.136.

SECTION .0200 - EQUIPMENT AND PROCESSING

21 NCAC 34C .0201 HOLDING FACILITY; CREMATION OR HYDROLYSIS UNIT; PROCESSORS

(a) Every crematory licensee shall have the following:

- (1) A a holding facility of suitable size to accommodate all human remains which are retained and awaiting ~~cremation~~ cremation;
- (2) A a commercially-manufactured cremation unit, within the crematory facility, made ~~specifically~~ for the cremation of human remains, meeting the following minimum standards:
 - (a)(A) ~~An~~ an ash collection pan that is designed for the purpose of removing cremated remains from the cremation unit and to minimize the commingling of cremated remains of one human remains with ~~another~~ another;
 - (b)(B) A a hearth or floor that has been maintained in accordance with recommended maintenance requirements specified by the machine's manufacturer or other qualified maintenance service representative; ~~without depressions so as to minimize commingling of cremated remains of one human remains with another.~~
 - (c)(C) A a door safety switch to stop the burner operation when the front charging door is ~~opened~~ opened;
 - (d)(D) A a pollution monitoring system to monitor and detect smoke when the density exceeds applicable federal and state standards, whereupon the system will automatically stop the burner operation on a time setting of not less than three ~~minutes~~ minutes; and
 - (e)(E) ~~Approval~~ approval by Underwriters Laboratory or a comparable a testing agency. agency such as Underwriters Laboratory;
- (3) A a commercially-manufactured processor, within the crematory facility, made ~~specifically~~ for the pulverization of cremated or hydrolyzed remains, meeting the following minimum standards:
 - (a)(A) ~~Capable~~ capable of consistently processing cremated and/or hydrolyzed remains to unidentifiable dimensions. dimensions;
 - (b)(B) A a dust-resistant processing ~~chamber~~ chamber;
 - (c)(C) ~~An~~ an exterior surface made of easily cleaned, non-corrosive ~~material~~ material;

(b) Every hydrolysis licensee shall have the following:

- (1) a holding facility of suitable size to accommodate all human remains which are retained and awaiting hydrolysis;
- (2) a commercially-manufactured hydrolysis unit, within the hydrolysis facility, made for

hydrolyzing human remains, and which meets the following minimum standards:

- (A) a collection pan, tray, or other device that is designed for the purpose of removing hydrolyzed remains from the hydrolysis unit and to minimize the commingling of hydrolyzed remains of one human remains with another; and
- (B) approval by Underwriters Laboratory or a comparable testing agency.
- (3) a commercially-manufactured processor, within the hydrolysis facility, that shall meet the same minimum standards set forth in Subparagraph (a)(3) of this Rule.

Authority G.S. 90-210.41(9),(12); 90-210.45(d),(e); 90-210.50(a) 90-210.121(16); 90-210.125(d)(e); 90-210.130(a); 90-210.136(d),(h).

21 NCAC 34C .0202 REFRIGERATION

Unembalmed human remains retained in the custody of a crematory licensee for more than 24 hours prior to cremation shall be kept in a refrigeration unit. Crematory licensees shall have a refrigeration unit, capable of storing at least three adult human bodies, in the holding facility. Each refrigeration unit required by this Rule shall meet the following minimum standards:

- (1) Capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed.
- (2) Sealed concrete, stainless steel, galvanized, aluminum or other easily cleaned flooring in walk-in units.
- (3) Stainless steel, aluminum or other non-corrosive and easily cleaned materials for the remainder of the interior of all units.

(a) Crematory and hydrolysis licensees shall have a refrigeration unit capable of storing at least three adult human bodies in the holding facility. Each refrigeration unit required by this Rule shall be capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed; shall be a sealed concrete, stainless steel, galvanized, aluminum or other flooring in walk-in units; and shall be stainless steel, aluminum or other non-corrosive materials for the remainder of all units.

(b) Unembalmed human remains retained in the custody of a crematory or hydrolysis licensee for more than 24 hours prior to cremation or hydrolysis shall be kept in a refrigeration unit.

(c) The provisions of this Rule shall not be construed to require a crematory facility and hydrolysis facility that share common ownership and are located on a single contiguous piece of property to maintain more than one refrigeration unit.

Authority G.S. 90-210.121(9),(12); 90-210.134(a); 90-210.136(d),(h).

21 NCAC 34C .0205 LABELS

In addition to the requirements of G.S. 90-210.29A, the crematory or hydrolysis licensee shall attach a typed or printed label to the temporary initial container, urn or other permanent container at the time the cremated or hydrolyzed remains are placed therein. If an inside and outside container are used, then both shall be labelled. The label shall contain the name of the decedent, the date of cremation or hydrolysis, and the name of the crematory or hydrolysis licensee.

Authority G.S. 90-210.126; 90-210.134(a); 90-210.136(d),(h).

21 NCAC 34C .0206 CLEANLINESS

All areas of the crematory and holding or hydrolysis licensee facility facilities devoted to the reception, storage and cremation or hydrolysis of human remains and to the pulverization and delivery of cremated or hydrolyzed remains, and all equipment located therein, shall be kept in good repair and in a sanitary condition and subject to inspection by the Board or its agents at all times.

Authority G.S. 90-210.41(9),(12); 90-210.50(a) 90-210.121(16); 90-210.130(a); 90-210.136(d),(h).

21 NCAC 34C .0207 REMOVAL OF PACEMAKERS OR OTHER IMPLANTED DEVICES; AUTOPSIED REMAINS; COMMUNICABLE DISEASES

(a) No person other than an individual who is licensed by the Board as either an embalmer or funeral service licensee shall remove a pacemaker, defibrillator, or any other implanted device or material that must be removed from human remains prior to cremation or hydrolysis as set forth in G.S. 90-210.129(d); provided, however, that any such device or material deemed hazardous shall be removed in accordance with the guidelines set by the manufacturer thereof and any statutes or rules enforced by any proper regulating agency.

(b) It shall not be permissible for any person other than an individual who is licensed by the Board as either an embalmer or funeral service licensee to handle, treat, or otherwise prepare for cremation or hydrolysis the viscera removed from human remains as the result of an autopsy.

(c) A hydrolysis licensee shall not remove from the outer case required by G.S. 130A-395(b) and 10 NCAC 41A .0212, or to hydrolyze, any decedent who is known or suspected to have been infected with the plague, smallpox, or severe acute respiratory syndrome (SARS), without first obtaining the written consent of the local health director.

Authority G.S. 90-210.125; 90-210.129; 90-210.134; 90-210.136(d),(h).

SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS

21 NCAC 34C .0303 RECORDS OF CREMATION OR HYDROLYSIS AND DELIVERY

(a) All crematory or hydrolysis licensees shall complete receipts for human remains on Board forms. The crematory or hydrolysis licensee shall furnish the following information:

1. name of the crematory or hydrolysis licensee, licensee;
2. ~~full~~ first, middle, and last name of the ~~decedent~~, decedent;
3. date and time of ~~death~~, death;
4. date and time the human remains ~~was~~ were delivered to the crematory or hydrolysis licensee, licensee;
5. any affiliation by the person delivering remains with a funeral establishment or an individual licensed to practice funeral service under the provisions of G.S. 90-210.25(a2)(2), or crematory, crematory;
6. any affiliation with the crematory or hydrolysis licensee, licensee; and
7. first, middle, and last name and signature of the employee or agent of the crematory or hydrolysis licensee who received the human remains, remains, and any other information the Board deems necessary as required by law.

Every crematory or hydrolysis licensee shall furnish this receipt to the person who delivers the human remains to the crematory or hydrolysis licensee.

(b) All records documenting the release of human remains from a crematory or hydrolysis licensee to the person who receives the cremated or hydrolyzed remains shall be completed on Board forms. The crematory or hydrolysis licensee shall furnish the following information:

1. name of the crematory or hydrolysis licensee, licensee;
2. ~~the full~~ first, middle, and last name of the ~~decedent~~, decedent;
3. ~~the~~ date and time of release, release;
4. ~~the~~ first, middle, and last name of the person who received the cremated remains or hydrolyzed remains, remains;
5. ~~the~~ place where cremated or hydrolyzed remains were ~~received~~, received;
6. any affiliation by the person receiving remains with a funeral establishment or an individual licensed to practice funeral service under the provisions of G.S. 90-210.25(a2)(2) or other entity, entity; and
7. ~~the~~ signatures of the person delivering the remains and the recipient of remains, and any mailing or handling instructions, and any other information the Board deems necessary as required by law.

Crematory and hydrolysis licensees must provide evidence by signature, postal or shipping receipt or its equivalent, of the receipt upon delivery of the cremated or hydrolyzed remains.

(c) all records documenting the release of human remains from a funeral establishment or an individual licensed to practice funeral service under the provisions of G.S. 90-210.25(a2)(2) ("unaffiliated practitioner") to the person who receives the cremated or hydrolyzed remains shall be completed on Board forms. The funeral establishment or unaffiliated practitioner shall furnish the following information:

1. name of the funeral establishment ~~or unaffiliated practitioner~~, or unaffiliated practitioner;
2. ~~the full~~ first, last, and middle name of the ~~decedent~~, decedent;
3. ~~the~~ date and time of release, release;
4. ~~the~~ person to whom the remains were ~~released~~, released;
5. ~~the~~ type of container in which the remains were ~~released~~, released;
6. ~~the~~ signatures of the parties delivering and receiving remains, remains; and
7. any shipping or special handling instructions, instructions, and any other information the Board deems necessary as required by law.

Funeral establishments must provide evidence by signature, postal or shipping receipt or its equivalent, of the receipt upon delivery of the cremated or hydrolyzed remains. The provisions of this Paragraph shall not apply when the funeral establishment and crematory or hydrolysis licensee share common ownership and are physically located within one or more buildings on a contiguous piece of property that would qualify the funeral establishment to use "crematory," "crematorium," "cremation center," "hydrolysis facility," or "hydrolysis center" in its operating name; provided, however, that the crematory or hydrolysis licensee shall comply with Paragraphs (a), (b), and (d) or (e) of this Rule.

(d) In order to track the human remains through the cremation or hydrolysis process from the time the remains are received at the crematory or hydrolysis licensee facility until the cremated or hydrolyzed remains are delivered, all crematory or hydrolysis licensees shall keep records on Board forms. The crematory or hydrolysis licensee shall furnish the following information:

1. first, middle, and last name of the crematory ~~or hydrolysis licensee~~, or hydrolysis licensee;
2. ~~full~~ first, middle, and last name of the ~~decedent~~, decedent;
3. description of the cremation or hydrolysis container ~~used~~, used;
4. time and date the decedent was placed into the ~~crematory or hydrolysis unit~~, or hydrolysis unit;
5. first, middle, and last name of person who placed the deceased in the ~~crematory or hydrolysis unit~~, or hydrolysis unit;
6. time and date the cremated or hydrolyzed remains were removed from the ~~crematory or hydrolysis unit~~, or hydrolysis unit;
7. type of container in which the cremated or hydrolyzed remains were ~~placed~~, placed;
8. time and date the cremated or hydrolyzed remains were ~~processed~~, processed; the and
9. first, middle, and last name and signature of the person who processed the cremated or hydrolyzed remains and placed them into a container, and any other information the Board deems necessary as required by law.

(e) In lieu of the separate forms required by Paragraphs (a), (b), and (d) of this Rule, a crematory or hydrolysis licensee may use a

form prescribed by the Board that combines all information required by Paragraphs (a), (b), and (d) of this Rule.

(f) The crematory or hydrolysis licensee shall retain the completed forms required by this Rule for a period of 3 years and shall produce all cremat ~~ory~~ ion or hydrolysis forms for inspection or copying by the Board or its agents upon request. Unless otherwise permitted by this Rule, ¶ the funeral establishment or individual licensed to practice funeral service under the provisions of G.S. 90-210.25(a2(2)) shall retain the completed form required by Paragraph (c) of this Rule and shall produce the form for inspection or copying to the Board or its agents upon request.

Authority G.S. 90-210.127; 90-210.134(a); 90-210.136(d),(h).

21 NCAC 34C .0306 RETENTION OF RECORDS

A copy of all death certificates, authorizations, waivers, statements, reports and other documents required by G.S. 90-210.120 through G.S. 90-210.134 and by the rules in this Subchapter shall be retained by the crematory or hydrolysis licensee for a period of three years and shall, during that period, be subject to inspection by the Board or its agents.

Authority G.S. 90-210.127; 90-210.134(a); 90-210.136(d),(h).

This Section contains information for the meeting of the Rules Review Commission May 16, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeffrey A. Poley
Brian P. LiVecchi

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

Amber Cronk May (919) 431-3074
Amanda Reeder (919) 431-3079
Ashley Snyder (919) 431-3081

RULES REVIEW COMMISSION MEETING DATES

July 18, 2019 August 15, 2019
September 19, 2019 October 17, 2019

RULES REVIEW COMMISSION MEETING**MINUTES****May 16, 2019**

The Rules Review Commission met on Thursday, May 16, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Margaret Currin, Anna Baird Choi, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsel Amber Cronk May, Amanda Reeder, and Ashley Snyder; and Alex Burgos and Dana McGhee.

The meeting was called to order at 9:02 a.m. with Chairman Dunklin presiding.

The Chair introduced OAH Extern, Kelsi M. Williams, to the Commission.

The Chair introduced new Commission Counsel, Ashley Snyder, to the Commission.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the April 18, 2019 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS**Board of Elections**

08 NCAC 02 .0112, .0113; 03 .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301; 04 .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .and 0108 were unanimously approved.

At the August 2018 meeting, the Commission objected to existing language contained in 08 NCAC 03 .0101 for ambiguity; 03 .0302 for necessity; and 08 .0104 and 09 .0109 for statutory authority. In accordance with G.S. 150B-

21.12(d), the agency requested that the Rules be returned. The Commission's objections are to existing language. These Rules will be removed from the NCAC.

The agency is addressing the objections for 08 NCAC 10B .0101, .0102, .0103, .0104, .0105, .0106, and .0107. No action was required by the Commission.

Prior to the review of the rules from the Board of Elections, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206 – The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

Environmental Management Commission

15A NCAC 02B .0601, .0602, .0603, .0604, .0605, .0606, .0608, .0610, .0611, .0612, .0715, .0720, .0721, .0722, .0735; 02H .0501, .0502, .0503, .0504, .0507, .1301, .1302, .1303, .1304, and .1306 were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Environmental Management Commission

15A NCAC 02H .0901, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0912, .0913, .0914, .0915, .0916, .0917, .0918, .0919, .0920, .0921, and .0922 – The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

Environmental Management Commission

15A NCAC 02L .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515 were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Marriage and Family Therapy Licensure Board

21 NCAC 31 .0201, .0202, .0203, .0301, .0401, .0403, .0404, .0501, .0502, .0503, .0504, .0505, .0506, .0609, .0701, .0801, .0802, .1001, and .1002. – The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

LOG OF FILINGS (PERMANENT RULES)

Department of Natural and Cultural Resources

07 NCAC 02I .0201 was unanimously approved.

DHHS - Division of Health Benefits

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 10A NCAC 23E .0105, .0202; 23G .0203, .0304; and 23H .0109 in accordance with G.S. 150B-21.10. They did so in response to a request from DHHS - Division of Health Benefits to extend the period in order to allow the agency to address public comments and submit the rewritten rules at the July meeting.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0503 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Wildlife Resources Commission

15A NCAC 10C .0401 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Department of Transportation

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Supplemental Retirement Board of Trustees/ Department of State Treasurer

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Landscape Contractors' Licensing Board

All rules were unanimously approved.

Prior to the review of the rules from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and are actively involved in the rulemaking process.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Appraisal Board

All rules were unanimously approved.

Prior to the review of the rules from the Appraisal Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and are actively involved in the rulemaking process.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Real Estate Commission

All rules were unanimously approved.

Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Commission and was involved with some of the subject rules.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Respiratory Care Board

21 NCAC 61 .0204 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Building Code Council

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

LOG OF FILINGS (TEMPORARY RULES)

Board of Funeral Service

All rules were unanimously approved.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm previously (but recently) represented the Board.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

EXISTING RULES REVIEW

Commission for Mental Health/DD/SAS

10A NCAC 27G - The Commission unanimously approved the report as submitted by the agency, with the following exceptions for rules that received public comment that were deemed to have merit as defined by G.S. 150B-21.3A(c)(2): 10A NCAC 27G .0207 and .2202. The RRC designated those rules as “necessary with substantive public interest.”

DHHS - Division of Mental Health/DD/SAS

10A NCAC 27G - The Commission unanimously approved the report as submitted by the agency.

Commission for Mental Health/DD/SAS/Division of Mental Health/DD/SAS

10A NCAC 27G - The Commission unanimously approved the report as submitted by the agency.

Commission for Public Health

15A NCAC 18A - The Commission unanimously approved the report as submitted by the agency.

Board of Agriculture

02 NCAC 48A, 61 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

Board of Agriculture

02 NCAC 52J – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

Commission for Public Health

10A NCAC 41C – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than February 28, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

State Registrar

10A NCAC 41H - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

COMMISSION BUSINESS

Molly Masich, the Codifier of Rules, addressed the Commission on the Style Guide. Molly Masich introduced Gerry Cohen, the drafter of the Style Guide.

Gerry Cohen addressed the Commission on the Style Guide and opened the floor for comments and suggestions from the Commission.

The Commissioners directed the Codifier to disseminate the Style Guide to rulemaking coordinators for comments.

The meeting adjourned at 9:40 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 20, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

33:24


NORTH CAROLINA REGISTER

2408

[illegible]

May 16, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Hannah Jennigan	DOT
Scott Bullock	DEQ UST
Laura Pake	DST
Sue Harnewood	DEQ
Melissa Vuotto	REC
Rob Patchetti	REC
Larry Michael	DHHS
Sandra Prince	NCDS
C. Hollis	OSTM
Shazia Kellew	DAB
CALVIN KIRVEN	NCLCLB
BARRY GUSTON	NCDOI/NCBCC
REDD CUTHBERTSON	NC DST
John Eganburger	DHHS
Katelyn Love	SBE
	NC DOT
Timothy Owens	DNCR
Karen Higgins	DEQ
Don Roddicks	NCAB
John D Barkley	NC DOJ for CPH
Jessica Macari	NC DOJ DHHS



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

May 16, 2019

Christina L. Waggett, Rulemaking Coordinator
Board of Agriculture
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **02 NCAC 48A, 61**

Dear Ms. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 16, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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Clerk's Office
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Commission
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Agriculture, Board of
Total: 15**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>02 NCAC 48A .0401</u>	Necessary with substantive public interest
<u>02 NCAC 48A .0402</u>	Necessary with substantive public interest
<u>02 NCAC 48A .0612</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0101</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0102</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0103</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0104</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0105</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0106</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0107</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0108</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0109</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0110</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0111</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0112</u>	Necessary with substantive public interest



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Raleigh, NC 27609-6285

May 16, 2019

Christina L. Waggett, Rulemaking Coordinator
Board of Agriculture
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **02 NCAC 52J**

Dear Ms. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 16, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2022.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
919/431-3000
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Rules Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Agriculture, Board of
Total: 48**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>02 NCAC 52J .0101</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0102</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0103</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0104</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0201</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0202</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0203</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0204</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0205</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0206</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0207</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0208</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0209</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0210</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0301</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0302</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0303</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0304</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0401</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0402</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0403</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0404</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0405</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0406</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0407</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0408</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0409</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0410</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0411</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0412</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0413</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0414</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0415</u>	Necessary with substantive public interest

<u>02</u>	<u>NCAC 52J .0416</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0417</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0418</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0419</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0501</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0701</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0702</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0703</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0704</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0705</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0801</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0802</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0803</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0901</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC 52J .0902</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
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Street address:
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Raleigh, NC 27609-6285

May 16, 2019

Virginia Niehaus, Rulemaking Coordinator
DHHS – Commission for Public Health
1931 Mail Service Center
Raleigh, NC 27699-1931

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 41C**

Dear Ms. Niehaus:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 16, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than February 28, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 13, 2018
APO Review: February 16, 2019
Public Health, Commission for
Total: 6**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 41C .0304</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0601</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0602</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0608</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0701</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0703</u>	Necessary with substantive public interest



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May 16, 2019

Virginia Niehaus, Rulemaking Coordinator
State Registrar
1931 Mail Service Center
Raleigh, NC 27699-1931

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 41H

Dear Ms. Niehaus:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 16, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than June 30, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

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Rules Review
Commission
919/431-3000
fax: 919/431-3104

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 18, 2018
APO Review: December 22, 2018
State Registrar
Total: 1**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A</u> <u>NCAC 41H</u> <u>.1201</u>	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES
May 16, 2019 Meeting

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

Qualifications for Grant Eligibility 07 NCAC 02I .0201

ELECTIONS AND ETHICS ENFORCEMENT, BOARD OF

Appeal to the State Board of Elections 08 NCAC 02 .0112
New Elections Ordered by State Board of Elections 08 NCAC 02 .0113
Voter Complaints 08 NCAC 03 .0101
Charges 08 NCAC 03 .0102
Hearing 08 NCAC 03 .0103
Rights 08 NCAC 03 .0104
Scope 08 NCAC 03 .0105
Witnesses 08 NCAC 03 .0106
Filing Charges: Adoption of Procedures 08 NCAC 03 .0201
Hearings Date and Disposition 08 NCAC 03 .0202
Operation and Matter of Voting on Voting Systems 08 NCAC 04 .0304
Instruction of Precinct Officials and Voters in the use o... 08 NCAC 04 .0305
Duties of Custodians of Voting Systems 08 NCAC 04 .0306
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Periodic Rule Review
May 16, 2019****Necessary with substantive public interest**

Mental Health/DD/SAS, Commission for	<u>15A NCAC 18A .1006</u>	<u>15A NCAC 18A .1306</u>
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15A NCAC 18A .3101
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RRC Determination
Periodic Rule Review
May 16, 2019
Necessary without substantive public interest

Mental Health/DD/SAS,
Commission for
10A NCAC 27G .0101
10A NCAC 27G .0102
10A NCAC 27G .0103
10A NCAC 27G .0104
10A NCAC 27G .0201
10A NCAC 27G .0202
10A NCAC 27G .0203
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10A NCAC 27G .0501

10A NCAC 27G .0502
10A NCAC 27G .0503
10A NCAC 27G .0504

HHS - Mental Health/DD/SAS,
Division of
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10A NCAC 27G .0506
10A NCAC 27G .0507
10A NCAC 27G .0601
10A NCAC 27G .0602
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Mental Health/DD/SAS,
Commission for/Mental
Health/DD/SAS, Division of
10A NCAC 27G .0801
10A NCAC 27G .0802

Mental Health/DD/SAS,
Commission for

10A NCAC 27G .0803
10A NCAC 27G .0804

HHS - Mental Health/DD/SAS,
Division of
10A NCAC 27G .0805
10A NCAC 27G .0806
10A NCAC 27G .0808
10A NCAC 27G .0810
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Mental Health/DD/SAS,
Commission for
10A NCAC 27G .0813
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10A NCAC 27G .6903

**HHS - Mental Health/DD/SAS,
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10A NCAC 27G .7001
10A NCAC 27G .7002
10A NCAC 27G .7003
10A NCAC 27G .7004
10A NCAC 27G .7101

Public Health, Commission for

15A NCAC 18A .1005
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RULES REVIEW COMMISSION

15A NCAC 18A .3314
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15A NCAC 18A .3639
15A NCAC 18A .3801
15A NCAC 18A .3803
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15A NCAC 18A .3805

**RRC Determination
Periodic Rule Review
May 16, 2019
Unnecessary**

Public Health, Commission for
15A NCAC 18A .1029
15A NCAC 18A .1322

15A NCAC 18A .1325
15A NCAC 18A .1425
15A NCAC 18A .1524

15A NCAC 18A .1622
15A NCAC 18A .3102

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
18	ABC	04808	4/12/2019	Express Food Mart Of Goldsboro Inc	v.	North Carolina Alcoholic Beverage Control Commission	Bawtinheimer
18	ABC	05369	4/3/2019	NC Alcoholic Beverage Control Commission	v.	Hashim Hussein Mohamed T/A M H New Mart	Overby
18	ABC	07219	4/26/2019	NC Alcoholic Beverage Control Commission	v.	X Press Mart Inc T/A X Press Mart	Ward
18	CPS	02239	4/3/2019	Paul A Mariano	v.	North Carolina Crime Victims Compensation Commission	Malherbe
18	DHR	06539	4/30/2019	Mission Medstaff LLC	v.	NC Department of Health and Human Services	Malherbe
18	DOJ	05183	4/22/2019	Brian Kenneth Wayne	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	05613	4/30/2019	Stanley Colt Robbins	v.	NC Sheriffs Education and Training Standards Commission	Bawtinheimer
19	DOJ	00476	4/25/2019	Standing Guard Protective Services and Henry Michael Jackson Qualifying Agent	v.	NC Private Protective Services Board	Elkins
18	DST	07133	4/9/2019	Laura M Riddick	v.	Dept of State Treasurer, Retire Sys Div; Dale Folwell State Treasurer(in ofc capacity only); Steven C Toole Dir Retire Syst Div(in ofc cap only); NC Retire	Stephens

CONTESTED CASE DECISIONS

						System Comm Bd of Trustees(in ofc cap only)	
18	EBD	07550	4/17/2019	Hartwell Carson	v.	NC State Ethics Commission	Sutton
18	OSP	06340	4/8/2019	Natasha L Ward	v.	NC Department of Health and Human Services O'Berry Neuro-Medical Treatment Center	Bawtinhimer
18	SAP	06891	4/26/2019	North Carolina Substance Abuse Professional Practice Board	v.	Leon Jacobs	Overby
				<u>UNPUBLISHED</u>			
19	ABC	00357	4/1/2019	NC Alcoholic Beverage Control Commission	v.	Riverview Inn Inc T/A Riverview Raw Bar And Grill	Malherbe
19	ABC	00965	4/8/2019	NC Alcoholic Beverage Control Commission	v.	E L Z Restaurant Group LLC T/A Bardo	Malherbe
18	CPS	05457	4/10/2019	E Brian Lane	v.	NC Crime Victims Compensation Commission	Bawtinhimer
17	CSE	07380	4/2/2019	Karene Mclean	v.	Harnett County Child Support Enforcement NC Child Support Enforcement	Ward
18	CSE	02266	4/4/2019	Timothy D Jones	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
18	CSE	06294	4/15/2019	Reginald Boyd	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
18	CSE	06555	4/15/2019	Antonio D Adams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
18	CSE	06635	4/2/2019	Jamall S Curry	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
18	CSE	06638	4/10/2019	Alisha N Sessoms	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Jacobs
18	CSE	06860	4/17/2019	Dustin R East	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May